
(2006) 05 P&H CK 0194
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4940 of 2004

Shri Banke Bihari Bricks

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 26-05-2006

Acts Referred:

Minimum Wages Act, 1948 — Section 13, 13(1), 14, 20, 20(1)

Citation : (2007) 1 LLJ 950 : (2006) 144 PLR 618 : (2007) 3 RCR(Civil) 277

Hon'ble Judges : J.S. Narang, J;Arvind Kumar, J

Bench : Division Bench

Advocate : R.N. Raina, for the Appellant; Nirmaljit Kaur, Addl. A.G. and Poonam Josan, A.A.G., for Respondent Nos. 1 to 3 and B.R. Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

Arvind Kumar, J.—By this judgment, we propose to dispose of CWP Nos.4940 and 4941 of 2004, as in both the petitions a common question of law and facts is involved.

2. First of all we would like to refer to the facts of CWP No. 4940 of 2004.

3. Respondent No. 4 Binder Singh (hereinafter called as private respondent) claiming himself to be worked at the brick kiln of the petitioner-firm, filed an application u/s 20(2) of the Minimum Wages Act (for brevity, the Act) before respondent No. 3 exercising the powers under the Act, alleging therein that he had worked with the petitioner-firm from 12.9.1998 to 25.11.1998. He was paid Rs. 79,190/- whereas his contract with the petitioner-firm was for Rs. 1,50,000/-. Thus, he prayed for payment of Rs. 70,810/- on account of less wages paid as also the compensation to the tune of 10 times of the aforesaid amount, from the petitioner-firm.

4. It appears that initially the application of private respondent was contested by the petitioner by submitting a reply challenging the maintainability of the said application as also the cause of action accruing to the private respondent in filing

the same. Thereafter, the issues were settled. But later on the petitioner was proceeded ex-parte due, to nonappearance.

5. The private respondent adduced ex-parte evidence. Thereafter, vide order dated 3.5.2001 respondent No. 3 held the petitioner-firm liable for payment of Rs. 7,08,100/- to the private respondent which includes the amount of less wages paid and ten times compensation.

6. So far as writ petition No. 494 I of 2004 is concerned, the same has also been filed by the petitioner-firm against the order dated 3.5.2001 passed on an application u/s 20(2) of the Act filed by respondent Chhinder Singh (hereafter called as private respondent) claiming payment of Rs. 72,243/- on account of less wages paid for the work carried out with the petitioner-firm from 26.11.1998 to 11.9.1999, along with compensation amounting to 10 times of the actual due amount. In that case, vide the impugned order, the petitioner-firm has been held responsible to pay a sum of Rs. 7,24,430/- to the private respondent which includes the amount of less wages paid and ten times compensation.

7. Both these orders have been assailed by the petitioner through the instant writ petitions.

8. According to the petitioner, all these proceedings are non est and does not contain any element of judicial propriety. At the stage when the petitioners filed reply to the application u/s 20(2) of the Act, they were assured by respondent No. 3 that the same will not be decided by him, as the application is not maintainable. Accordingly the petitioner never participated in the proceedings after 30.8.2000. But to their surprise, as stated above, they were proceeded ex-parte. The petitioner claimed to have acquired knowledge about the impugned order when it received munadi notice/summons issued on the application u/s 20(5)(b) of the Act filed by the concerned authority, by the Civil Court directing to appear before the Court on 17.1.2004.

9. The further stand of the petitioner is that the controversy involved in the present case does not fall within the purview of the Act. The case put forth by the private respondents never ever speaks of less payment than the minimum rates of wages made to them. Rather it comes within the ambit of civil dispute. To redress their grievance, private respondents were required to file a civil suit and the authority under the Act is not appropriate forum for adjudication of matters pertaining to works contract.

10. Further, the grouse of the petitioner is that the applications filed by the private respondents u/s 20(2) of the Act were time barred as the same had been filed after the expiry of stipulated period of six months.

11. On notice, respondents put in appearance before this Court. Respondent No. 3 filed separate written statements in both the petitions, more or less on the same grounds, denying the allegations levelled in the petitions. It is averred by him that the impugned orders are legal, valid, well founded in law and as per the

provisions of the Act. The petitioner was given adequate opportunities to contest the claim and due to non-appearance on 13.12.2000 it was rightly proceeded ex-parte, Since the case of private-respondents was found covered under the provisions of the Act, as such, the impugned orders were passed. Thus sought dismissal of the writ petitions.

12. We have heard learned Counsel for the parties and have gone through the paper book carefully.

13. The counsel for the petitioner has argued that the private-respondents never raised any dispute of payment of less than minimum rate of wages payable to the workman, as such, no proceedings under the Act particularly u/s 20 thereof could be initiated. It has, thus, also been argued that the very initiation of present proceedings are illegal and the order awarding compensation is also liable to be vitiated.

14. The moot question that falls for determination in these cases is whether in the facts and circumstances initiation of the proceedings u/s 20 of the Act are legal and valid? If this question is answered in negative, there will be no difficulty in quashing the impugned orders. The very relevant document in the instant cases is applications filed separately by respondents Binder and Chhinder Singh", u/s 20(2) of the Act (Annexure P-5). The relevant portion of application filed by respondent Binder Singh reads as under:

It is requested that I was working to construct the chimney with the above said brick owner. I worked there from 12.9.1998 to 25.11.1998. My contract was for Rs. 1,50,000/-, out of which owner has paid only Rs. 79,190/- to me.

I may kindly be made a sum of Rs. 70,810/0 (Rupees Seventy thousand Eight hundred and ten only) from the owners in respect of payment of less wages.

The excerpt of the application filed by respondent Chhinder Singh reads as under:

It is requested that I was engaged on Jamandari including Bharai (Kamandari Samet Bharai Katccha Mai Da Kam Karda Si) with the above said brick kiln owner. I worked there from 26.11.1998 to 11.6.1999. My wages were Rs. 57/- per 1000 plus Rs. 37- as commission total Rs. 60/-. I have been paid only Rs. 21,000/- (Rupees Twenty one thousand only).

I may kindly be ordered to be made a sum of Rs. 72,243/- (Rupees Seventy two thousand two hundred and forty three only) from the owners in respect of payment of less wages paid and compensation to the tune often times of that amount.

15. A bare perusal of the above-said applications shows that there is no assertion or pleading that the case pertains to less payment made by the petitioner than the minimum rate of wages. The purpose of Section 20(1) seems to be to ensure that the rates prescribed under the Act are complied with by the employer in making the payment and, if any attempt is made to make payments at lower

rates, the workmen are given the right to invoke the aid of the Authority appointed u/s 20(1) of the Act. However, in the instant cases, as discussed above, no dispute has been raised regarding the rate of wages payable to the private respondents. Their complaint is that they have not paid the full amount due towards wages and sought enforcement of the remaining wages. The remedy is, thus, not under the Act. This issue was under consideration before the Hon'ble Supreme Court in the case of Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., , wherein their Lordships made the following observations:

We have mentioned these provisions of the Minimum Wages Act, because the language used at all stages in that Act leads to the clear inference that that Act is primarily concerned with fixing of rates-rates of minimum wages overtime rates, rate for payment for work on a day of rest and is not really intended to be an Act for enforcement of payment of wages for which provision is made in other laws, such as the Payment of Wages Act No. 4 of 1936, and the Industrial Disputes Act No. 14 of 1947. In Section 20(1) of the Minimum Wages Act also provision is made for seeking remedy in respect of claims arising out of payment of less than the minimum rates of wages or in respect of payment of remuneration for days of rest or for work done on such days under Clause (b) or Clause (c) of Sub-section (1) of Section 13 or of wages at the overtime rate u/s 14. This language used in Section 20(1) shows that the Authority appointed under that provision of law is to exercise jurisdiction for deciding claims which relate to rates of wages, rates for payment of work done on days of rest and overtime rates. If there be no dispute as to rates between the employer and the employees, Section 20(1) would not be attracted.

16. Applying the afore-stated principle Laid down by the Hon'ble Apex Court, in the present case, it is clear that the proceedings initiated u/s 20(2) of the Act are not maintainable and the orders awarding compensation against the petitioners are without jurisdiction.

17 Furthermore, the Authority under the Act has lost sight of the fact that the applications filed by the private respondents u/s 20(2) of the Act were barred by limitation. The work was allegedly carried out from 12.9.1998 to 25.11.1998 (in case of private respondent Binder Singh) and from 26.11.1998 to 11.6.1999 (in case of private respondent Chhinder Singh) whereas the said applications were filed on 10.8.2000 and 1.8.2000 respectively that too without any explanation of filing the same belatedly. Whereas under the Act, the period of limitation prescribed for filing the application is six months. Thus, the claims of private respondents are barred by limitation.

18. In the result, the present writ petitions succeed/and the same are allowed. Impugned orders dated 23.5.2001 passed by respondent No. 3 on the applications filed u/s 20(2) of the Act by the private respondents namely Binder Singh and Chhinder Singh are quashed. The claims of the private respondents are dismissed. The private respondents, if so advised, may avail appropriate

remedy before appropriate forum. However, in the facts and circumstances of the case there shall be no order as to the costs.