

(1978) 11 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil Revision No. 284 of 1978

Suraj Mal

APPELLANT

Vs

Suraj Bhan and Others

RESPONDENT

Date of Decision : 17-11-1978

Acts Referred:

Factories Act, 1948 — Section 7

Payment of Wages Act, 1936 — Section 15, 18, 3, 4

Citation : (1978) WLN 391

Hon'ble Judges : S.K. Mal Lodha, J

Bench : Single Bench

Judgement

S.K. Mal Lodha, J.—This revision is directed against the order dated August 1, 1978 of the learned District judge, Churu, by, which he accepted in part of appeal of the petitioner who was opposite party No. 1 before the Authority under the Payment of Wages Act, 1936 (No. IV of 1936)(for short the Act,).

2. A few facts deserve recall there. The non-petitioner No. 1 (applicant before the Authority under the Payment of Wages Act) claimed a sum of Rs. 10, 680/- being the amount of wages for the period from April 1, 1974 to September 30, 1974 at the rate of Rs. 360/- per month and over time for the same period at the rate of four hours a day. In this revision, the petitioner will be referred to as opposite party No. 1 and the non petitioner will be referred to as the applicant. The application u/s 15(2) of the Act was submitted on November 6, 1975 before the Authority appointed under the Act ("the Authority" hereafter). It was mentioned that the opposite-party No. 1 is the Managing Director of the Bhaskar Textile Mills Jharsuguda (Orissa) and that the sent the applicant to Rajgarh (Sadulpur) where a college building was under constitution and the college building was to be constructed by the finds to be arranged and supplied by opposite-part) No. 1. It was further stated that the applicant worked therein the Mohta College from April 2, 1973 to March 19, 1974 and was getting his wages @ Rs. 360/- per month from the opposite-party No. 1. On March 19, 1974, the applicant met with an accident and was admitted in Bhagwani Devi Hospital, Sadulpur. He was not paid

wages for the month of April 1974. On being continuously approached, he was told that his dues would be paid on the arrival of opposite-party No. 1. The applicant also stated that in October 1975 when opposite-party No. 1 came to Sadulpur, he met him and demanded his wages and overtime act. but he was told by opposite party No. 1 that after the accident, he is no more in service and, therefore, the question of payment of his dues does not arise. Opposite-party No. 1 Brij Mohan Sharma, Secretary, Mohta College, Rajgarh (Sadulpur); opposite-party No. 2 end Shri M.R. Vyas, Principal, Mohta College, Rajgarh (Sadulpur) opposite-party No. 3 were impleaded as opposite parties in the application. The applicant claimed Rs. 6480/- on account of arrears of wages from April 1, 1974 to September 30, 1975 and overtime for the period from April 1, 1974 to March 18, 1975 amounting to Rs. 4200/-. The application u/s 15(2) was submitted in the prescribed preform with Annexure A, and a separate application was also submitted stating the reasons for not filing the application within the period of limitation prescribed u/s 15(2) of the Act. In column 2 of the application, u/s 15(2) it was mentioned by the applicant that opposite-party No. 1, opposite-party No. 2 and opposite party No. 3 are the persons responsible for the payment of his wages u/s 3 of the Act and their addresses for the service of the notices and processes were mentioned.

3. It appears from the perusal of the seal affixed on the application that it was within limitation and both the parties were asked to appear on November 26, 1975. On November 26, 1975 in the application for condonation of delay, the Authority recorded an order, : "Heard, delay condoned".

4. On behalf of the opposite-party No. 1, a detailed written-statement was submitted before the Authority on January 14, 1976. Opposite-parties Nos. 2 and 3, Brijmohan Sharma and M.R. Vyas, submitted a joint written-statement on January 16, 1976. All the opposite-parties resisted the claim of the applicant on various grounds. A true-copy of the applicant's statement of the Provident Fund Account as on March 31, 1975 dated September 1, 1975 was produced by his counsel. It appears from the record that a notice dated January 31, 1976 was issued by the counsel for the applicant to the Advocate for the opposite-parties, which was returned by the Advocate for the opposite-parties vide reply dated March 26, 1976. On April 21, 1976, it was ordered that the applicant should lead evidence and the opposite-parties be called for cross on the written reply, submitted by them. It was ordered that all the three opposite-parties should appear for statement and cross on April 28, 1976 at Ratangarh camp. On May 25, 1976, an application was moved on behalf of the opposite-parties that the order dated April 21, 1976 may be set aside and the evidence of the applicant may be recorded first. On that day another application was submitted on their behalf praying therein not before recording the evidence, not legal points, which were mentioned in the application, may be decided first. On this application, the Authority recorded the following order:

These issues are to be decided by hearing both parties and not prior to giving

both the parties an hearing.

(There are some mistakes)

In the proceedings of 25-5-1976, amongst other things, it was recorded that last opportunity is being given to both the parties to appear on the next date otherwise in their absence or in the absence of either of them, final decision would be taken on the basis of the material on record. On 14-6-1976, the applicant, Surajbhan Choudhary examined himself in support of the claims & he was cross-examined on behalf of the opposite-parties. The opposite parties did not submit themselves for examination. The Authority adjourned the case for orders on 16-6-1976. It appears from the order-sheet of June 16, 1976 that an application was submitted on behalf of the opposite-parties that they may be granted an opportunity to produce evidence. It was, inter alia mentioned that the opposite-parties would produce the evidence on the next date. It was recorded that the opposite parties must appear on July 13, 1976 in person or through their authorised representative who may be able to answer all material questions. It was specifically mentioned that this chance is being given to the opposite-parties to produce their evidence, documents etc. and if they fail to do so, no further opportunity would be granted to them. On July 13, 1976 on behalf of the opposite parties time was sought which was declined and the case was posted for arguments. After hearing the arguments, the Authority passed an order that the applicant is entitled to wages for the period of April 1, 1974, to September 30, 1975 amounting to Rs. 6,480/- and overtime wages amounting to Rs. 4200/- from April 1, 1973 to March 19, 1974, total Rs. 10,680/-; The Authority further awarded an equal amount of compensation to the applicant. The Authority, therefore, issued the following directions u/s 15(2) of the Act for making payment to the applicant by the opposite-party No. 1.

either as Managing Director of the Bhaskar Textile Mills or the Chairman of the Mohta Education Society or the trustee of the Mohta Charitable Trust in any one or more of the capacities, he is holding in these institutions.

The details of the amount awarded to the, applicant are:

Claimed wages Rs. 6, 480/- Overtime Rs. 4,200/- Compensation Rs. 10, 680/-
----- Total Rs. 21 360/- ----- This order was made by the
Authority on August 2, 1976.

5. The opposite-parties preferred joint appeal under s. 17 of the Act against the order and directions dated August 2, 1976 before the District Judge, Bikaner. The appeal was transferred to the Court of District Judge, Ghisau. The learned District Judge, Churu, by his judgment dated August 1, 1978, accepted the appeal in part and reduced the amount from Rs. 21, 360/- to Rs. 10, 000/- and directed that the opposite-party No. 1 Surajamal, Mohta, "either as Managing Director of the Bhaskar Textile Mill or the Chairman of the Mohta Education Society or the Trustee of the Mohta Charitable trust, in any one or more of the capacities, he is holding in these institution, shall, pay to the applicant Surajohan

Ghudhary Being aggrieved by the order and directions of the learned District Judge, Churu dated August 1, 1973, opposite party No. 1 has preferred this revision. In this revision applicant has been impleaded as non-petitioner No. 1 and opposite-parties Nos. 2 and 3 have been arrayed as, non-petitioners Nos. 2 and 3 respectively.

6. I have heard the learned Counsel for the parties and have carefully gone through the record of the case. Before examining the contentions raised by the learned Counsel for the opposite party No. 1, it will be useful to summarise the findings recorded by the learned District Judge which are as under:

(1) that there is no ground for disagreeing with the finding of the Authority that Suraj Mal Mohta (in his capacity as Managing Director of M/s Bhiaskar Textile Mills and as the person who sent the applicant to Rajgarh (Sadulpur) who worked there at the time of the construction undertaken in Mihta College by the Mohta Charitable; Trust of which he is the trustee) is responsible for the payment of wages to the applicant in any one or more of the capacities.

(2) that the contention that the provisions of the Act are not applicable to the opposite party No. 1 is without force.

(3) that the argument that the Authority, under the Payment of Wages Act Bikaner had no territorial jurisdiction to hear the application, is without basis

(4) that the Authority has not committed any error or illegality in condoning delay in presenting the application u/s 15(2) of; the Act.

7. Mr. B.R. Mehta, learned Counsel for the opposite-party No. 1, contended that the Act has been wrongly applied in this case as the applicability of the Act is limited to persons employed in any factory and to persons employed (otherwise than in a factory) upon any railway by a railway administration and to industrial establishment or in any class of group of industrial establishments in respect of which the State Government had issued notification in the Official Gazette, extending the provisions of the Act or any of them to the payment of wages to any class of persons employed therein. He drew my attention to the application u/s 15(2) filed by the applicant before the Authority and submitted that direction was sought by him against the opposite-party No 1 in his capacity as a trustee of the Mohta Educational Society, Rygarh and that is why opposite party No. 2 Brijmohao Sharma. Secretary, Mohta College and Mr. M.R. Vyai, Principal, Mohta College, were impleaded as opposite parties Nos. 2 and 3. In these circumstances, it was argued that since the Act is not applicable to the Mohta Educational Society or Mohta College, Rajgarh, the Authority has exercised jurisdiction not vested in it by law when it entertained the application u/s 15(2). He referred to Sections 6 to 8 of the Rajasthan Societies Registration Act, 1958 in support of his argument.

8. Section 15(2) of the Act provides that the employed person may apply to the Authority appointed under Sub-section (1) of Section 15 for a direction under

Sub-section (3). Sub-section (3) lays down that after entertaining an application under Sub-section (2) the Authority shall hear the applicant and the employer or other person responsible for the payment of wages u/s 3, Or give them an opportunity of being heard and, after such further inquiry (if any) as may be necessary, inter alia, direct the payment of delayed wages together with the payment of such compensation as the Authority may think fit in accordance with this sub-section. Section 2(ia) defines "employer". It is an inclusive definition in which "employer" includes the legal representative of a deceased employer. Here, I may read Section 3 of the Act:

3 Responsibility for payment of wages : Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act.

Provided, that in the case of persons employed (otherwise than by a contractor):

(a) in factories, if a person has been named as the Manager of the factory under Clause (f) of Sub-section (1) of Section 7 of the Factories Act, 1946;

(b) industrial establishments, if there is a person responsible to the employer for the supervision and control of the industrial establishment;

(c) upon railways (otherwise than in factories), if the employer in the railway administration and the railway administration has nominated a person in this behalf for the local area concerned,

the person so named, the person so responsible to the employer, or the person so nominated, as the case may be, shall also be responsible for such payment.

It is therefore, clear from this section that the application under the Act, can be made against the responsible to the employer, or the person so nominated, as the case may be, as specified in the proviso (a), (b) or (c).

9. It was is not in dispute that the provisions of the Act are applicable to M/s Bhaskar Textile Mills Ltd. It is also not disputed that the opposite party No. 1 was Managing Director of M/s Bhaskar Textile Mills. In the light of these two undisputed facts and the provisions of Section 3 of the Act, I have to determine whether the Authority was right in giving the direction to the opposite party No. 1 u/s 15(2) of the Act. The principal contentions in this regard raised by the opposite-party No 1 in the written statement filed before the Authority were that he was the Chairman of Mohta Educational Society and not a head trustee; that he permanently resided at Calcutta; that such society was duly registered under the West Bengal Societies Registration Act, 1961 having its head office at Calcutta and that the said Society had nothing to do with the Mohta College as it was neither its owner nor controller. On November 20, 1975, the Authority received a communication from M/s. Bhaskar Textile Mills in which while acknowledging the receipt of the notice of the Authority dated November 13, 1975 in form No. "E" addressed to the Managing Director, Shri Surajrhal Mohta (opposite-party No. 1) with instruction to appear before it on Nov. 26, 1975, it was stated that the next

date of hearing may be extended. It appears from the letter dated December 9, 1975 that the particulars of the service record of the person concerned (Surajbhan) were to be collected from various places & compliance with the instructions Of the Authority was likely to take long time. A pursual of these two letters sent by the Secretary of M/s Bhaskar Textile Mills Ltd. dated November 20, 1975 and December 9, 1975 clearly shows that the opposite-party No. 1 was the Managing Director of M/s Bhaskar Textile Mills and as such he exercised ultimate control over the affairs of the Mills, that applicant was the person whose service records were in possession of the said Mills and that he was deputed to various places It follows, therefore, that opposite party No. 1 was the Managing Director of the above Mills at the relevant time and was also the Chairman of Mohta Educational Society & a trustee of the Mohta Charitable Trust. The applicant Surajbhan Choudhary was examined by the Authority on June 14, 1976. He has stated that he worked as Cashier and looked after the sales also, that he was getting salary of 360/- per month, that in the first week of April, 1973, he was deputed in connection with the work of the College and that there, the salary was paid to him by the opposite-party No. 1 who was the Secretary of the College at the relevant time. In the cross-examination, he deposed that opposite-party No. 1 is the person responsible to pay wages to him as he kept him in service and wed to assign work to him and that he stopped the payment of the wages. He has further deposed that the vouchers in respect of his salary were of the Bhaskar Textile Mills. The statement of the applicant Surajbhan Choudhary has not been rebutted. On 21-4-1976, the Authority asked the opposite parties Nos. 1, 2 and 3 to be present before it for statement and cross examination on April 28, 1976. On May 25, 1976, it was again ordered that they should appear on June 14, 1976 to answer the material questions. They failed to appear on June 14, 1976 and the case was posted for orders on June 16, 1976 An application was moved on their behalf by their counsel on June 16, 1976 praying therein that one more chance may be given to them for producing the evidence or documents. Even on July 13, 1976, they did not appear and again asked for time & the Authority, in view of the fact that various opportunities had already been given declined to give any further adjournment. Therefore, there is nothing on the record to disbelieve the statement of the applicant Surajbhan that he was employed in the Bhaskar Textile Mills, Calcutta & was sent to Rajgarh (Sadulpur, in the first week of April, 1973 in connection with the construction work, undertaken in Mohta College by the opposite-party No. 1, Nurajmal Mohta Managing Director, Bhaskar Textile Mills, Calcutta. It is also clear from the statement of the Provident Fund Accwnt (Ex. P.I) as on March 31 1975, that the applicant was in service of the Bhasker Textile Mills even prior to April 1, 1974, & that he paid contribution towards the Provident Fund during the financial year 1974-75. It deserves to be mentioned that notice under Order XII, Rule 8, dated 31-1-976 was served on the Advocate of the opposite parties. That notice has been placed on the record. In paras 4 & 5 of that notice production of service records of the applicant was sought to show that the applicant was employed in the Bhaskar Textile Mills, and that he was sent by the opposite-party No. 1

Surajmal Mohta Managing Director of the Bhaskar Textile Mills to Rajgarh (Sadulpur), in connection with the construction work of the above mentioned college, for doing work and maintaining accounts and that upon March 31, 1974, he was paid wages by the Bhaskar Textile Mills and further to show that the amount of contribution to Provident Fund was deducted for the period April 1, 1974 to April 30, 1974. The object of production of service record was to show that from 1-4-1973 to April 30, 1974, the wages were paid to the applicant from the Bhaskar Textile Mills after his transfer to the Mohta. In reply to that notice, in para 4, it was stated by the learned Counsel for the opposite-parties that his clients were unable to produce the records asked for because the Bhaskar Textile Mills Ltd. is not a party in the application. The statement of the Provident Fund Account (Ex. P.) clearly shows that from the wages of the applicant a sum of Rs. 28.75 was deducted on account of member's contribution during the year 1974-75 i.e. for the month of April, 1974.

10. The Authority was, therefore, right in holding that opposite party No. 1 was employer and he employed the applicant and it was he who sent the applicant to Sadulpur (Rajgarh) and, therefore, he is responsible for the payment of wages to the applicant. The learned District Judge confirmed this finding of the Authority relying on the material which was on the record. The contention of the learned Counsel for the opposite-party No. 1 is that opposite-party No. 1 as Managing Director of the Bhaskar Textile Mills was not impleaded as such and, therefore, no order could be made against him on the application u/s 15(2) of the Act. This argument has no force. u/s 15(2), the application lies for a direction against an employer who is responsible for payment to the persons employed by him of the wages required to be paid under the Act. In my opinion, for the reasons mentioned by the Authority, as well as by learned District Judge, opposite party No. 1 Surajmal has rightly been held as a person responsible for the payment of wages to the applicant. No illegality has been committed by the learned District Judge when he upheld the direction that Surajmal Mohta either as Managing Director of Bhaskar Textile Mills or as the Chairman of Mohta Educational Society or Trustee of the Mohta Charitable Trust, in any one or more of the capacities he is holding in these institutions is responsible to make payment of the amount determined by him.

11. It was next contended that the application of the applicant u/s 15(2) of the Act for the payment of wages from April 1 1974 to September 30, 1975 was barred by limitation as it was presented on November 6, 1975; that the Authority has wrongly condoned the delay and that the learned District Judge has exercised his jurisdiction illegally & with material irregularity in confirming the order of the Authority relating to condonation of the delay.

12. Proviso to Section 15(2) lays down that every application under that section shall be presented within 12 months from the date on which the payment of wages was due to be made, Second proviso to Section 15(2) provides that an application u/s 15(2) can be admitted after the said period of 12 months, when

the applicant satisfies the Authority that he had sufficient cause for not making application within such period. Sub-section (3) of Section 15 amongst others, says that when any application under Sub-section (2) is entertained, the Authority shall hear the applicant and the employer or other person responsible for the payment of wages u/s 3. The applicant submitted an application for condonation of delay along with the application in the prescribed proforma u/s 15(2). In that application, it was stated by the applicant that while on duty on March 19, 1974, the bone of his leg got fractured and as such, he remained as an indoor patient in Shree Bhagwani Devi Hospital, Sadulpur. The medical certificate dated 31-7-1974 was placed on record on December 27, 1975, which recites that the applicant was admitted in hospital on March 19, 1971 & was discharged on June 26, 1974. He was also recommended medical leave from March 19, 1974 to October 31, 1974. The claim was filed on November 6, 1975. The applicant in his statement before the Authority stated that he suffered fracture of his leg on March 19, 1974 while he was on duty and the persons on the spot sent him to the hospital and got him admitted there. He was also paid the salary upto March 31, 1974. He further stated that he, while in the hospital could not stand; that the doctor discharged him on June 26, 1974; that he was not alright at that time; that therefore he was again admitted and discharged on October 31, 1974 and that after becoming little better, he started moving about. These were facts that were pleaded by the applicant & which have not been rebutted by the opposite parties, The Authority, after hearing the applicant, condoned the delay and admitted the application. The learned District Judge agreed with the conclusion reached by the Authority in this regard and he was of the opinion, that no error or illegality was committed by the Authority in condoning the delay. However, that does not condone the point. The applicant, in his application, has claimed wages from April 1, 1974 to September 30, 1975 @ Rs. 3607/-, per month, amounting to Rs. 6480/-. As stated above, his application u/s 15(2) of the Act was submitted on November 6, 1975. The delay, from March 19, 1974 to October 31, 1974 was condoned by the Authority on the basis of the averments made in the application which was submitted along with the application in the prescribed proforma u/s 15(2). Even accepting the finding of the Authority which was confirmed by the learned District, the claim of the applicant for wages pertaining to the period from April 1, 1974 to October 31, 1974 is barred by time as there is no material on record to show that in respect of this period, there was any sufficient case for the applicant not to have made an application within twelve months from the date when the wages became due. It is not in dispute before me that the wages were paid monthly to the applicant. Section 4 of the Act deals with the fixation of wage period and provides that every person responsible for the payment of wages u/s 3 shall fix period in respect of which such wages shall be payable and Sub-section (2) thereof further provides that no wage-period shall exceed one month and Section 5 fixes the time of payment of wages. In this case, each month's wages became payable on the expiry of each month. First proviso to Section 15(2) inter alia lays down that an application u/s 15(2) relating to any payment of wages should be presented

within 12 months from the date on which the payment of wages became due. The wages for the months of April, May, June, July, August, September and October 1974, become due on 1st of each succeeding month. The applicant was required to submit his application for the aforesaid seven months within 12 months from the date when the wages of each month became due. No sufficient cause for not presentation of the application within 12 months from the date on which the payment became due has been pleaded in respect of these seven months. Even during the course of arguments, learned Counsel appearing for the applicant could not satisfy me as to why the application for the payment of wages of these seven months was delayed. It is not the case of the applicant that he was prevented by sufficient cause from presenting the application u/s 15(2) of the Act in respect of the wages for the months of April to October, 1974 within twelve months. The Authority as well as the learned District Judge did not examine the question from this angle to whether the claim for wages for seven months from April 1974 to October 1974 was barred by time and there was no sufficient cause for not presenting the application within limitation. The Authority as well as the learned District Judge have, therefore, decided the question of sufficiency of cause within the meaning of Section 15(2), second proviso in disregard of the fact that there was neither any pleading nor any evidence led on behalf of the applicant in regard to the delayed presentation of the application u/s 15(2) for the payment of wages in respect of the period April 1974 to October 1974.

13. The other point which was argued by the learned Counsel for the opposite-party No. 1 is that the Authority did not follow the prescribed procedure in as much as issues arising out of the pleadings of the parties were not framed and opportunity was not afforded to the opposite-parties for evidence thereafter. Learned Counsel invited my attention to Section 18 of the Act which says that every authority appointed under Sub-section (1) of Section 15 shall have all the powers of a Civil Court under the CPC for the purpose of taking evidence and of enforcing the attendance of witnesses" and compelling the production of documents. Section 15 merely lays down that when any application under Sub-Section (2) is entertained, the Authority shall hear the applicant and the employer or other person responsible for the payment of wages u/s 3, or give them an opportunity of being heard, and, after such further inquiry (if any), as may be necessary, may make direction contemplated in that sub-section. Section 18 merely deals with the power of an Authority. Whole of the GPC is not applicable, under the Act. Learned Counsel for the opposite-party No. 1 could not point out any provision of law which makes it incumbent upon the Authority to frame issues and thereafter to record evidence of the parties. It may be stated here that this point was not argued before the learned District Judge. The learned District Judge has recorded findings in respect of the points that were argued before him and since there is no finding of the learned District Judge on this point, it can be inferred that this point, namely, that the Authority had not followed the prescribed procedure was not argued before him may add that the learned Counsel did not contend that any prejudice was, caused to the opposite

party No. 1 for the failure of the Authority, to frame the issues.

14. As has been stated in the foregoing paras of this order; the opposite parties did not appear for statement of cross-examination as ordered by the Authority on April 21, 1976, At their request, time was granted on May 25, 1976 and June 16, 1976 but they failed to produce any evidence or document,

15. In the circumstances of the case, no valid exception, can be taken to the proceedings conducted by the Authority while making inquiry u/s 15(2) of the Act. I agree with the Authority as well as the learned District Judge that the opposite-party No. 1 was the employer responsible for the payment of wages to the applicant and he is entitled to get wages for their months from November 1974 to September, 1975 i.e. for eleven months at the rate of Rs. 360/- per month.

16. The Authority had issued direction u/s 15(2) of the Act for payment of Rs. 21, 360/- to the applicant as aforesaid. On appeal, by opposite parties, the learned District Judge reduced the amount from Rs. 21, 360/- to Rs. 10, 000/- consisting of Rs. 6480/- being the amount of wages for 18 months from April 1974 to September 30, 1975 and Rs. 3, 520/- as compensation. The learned District Judge has set aside the direction regarding the overtime work and part of compensation.

17. Having regard to the circumstances of the case, the learned District Judge fixed Rs. 3520/- as compensation. The applicant remained satisfied and he has not assailed the order of the District Judge setting aside, the direction for the payment of over time work and part of compensation. Learned Counsel appearing for the petitioner did not assail before me either that the compensation u/s 15(3) should not have been, awarded or that the compensation amounting to Rs. 3, 520/- determined by the learned District Judge is exorbitant or excessive.

18. No other point was pressed by the learned Counsel for the opposite party No. 1 in this revision.

19. The result is that I partly allow this revision application and reduce the amount of wages from Rs. 6,480/- to Rs. 3, 960/- being the amount for the period from November 74 to September, 1975 at the rate of Rs. 360/. per month. The determination of the compensation amounting to Rs. 3520/- by the learned District Judge for withholding the wages is maintained, Thus, the applicant will be entitled to Rs. 3, 520/- as compensation total 7, 480/- from the opposite-party No. 1. In the facts and circumstances of the case, I leave the parties to bear their own costs of this revision application.