
(1957) 01 AHC CK 0018
In the Allahabad High Court
Case No : Civil Revision No. 1189 of 1953

W.M. Godse

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 25-01-1957

Acts Referred:

Payment of Wages Act, 1936 — Section 15, 15(3), 17, 19, 3

Citation : AIR 1957 All 652 : (1957) 27 AWR 410 : (1957) 2 LLJ 229

Hon'ble Judges : Mukerji, J

Bench : Single Bench

Advocate : Yashoda Nandan, for the Appellant;

Final Decision : Disposed Of

Judgement

Mukerji, J.—This is an application in revision against an order of the District Judge of Banaras, whereby he disposed of an appeal preferred to him u/s 17, Payment of Wages Act (Act IV of 1936).

2. The facts giving rise to this application, shortly stated, were these. At Banaras there is a press called the Arya Bhushan Press, whose proprietor is one W. M. Godse. There was an industrial dispute in respect of this press, and that industrial dispute was the subject-matter of an adjudication under the Industrial Disputes Act. There was also a question about the payments of certain employees being in arrears: There were twentythree such workmen whose wages had not been paid and were as suck in arrears.

The Chief Inspector of Factories came to know about it, and made a report about this matter to the Magistrate, appointed under the Payment of Wages Act for the area, to decide questions arising for decision under that Act. On the information received from the Chief Inspector of Factories the Magistrate issued a notice to the Manager of the press, one Nirmala, to show cause why an order for payment of wages be not made against the Manager of the press. This notice was issued on 15-11-1951. A written statement was filed on 4-12-1951, contesting the

claim for wages. There was some sort of a compromise in the industrial disputes matter also in regard to the payment of the wages which were the subject-matter of the proceedings before the Magistrate under the Payment of Wages Act.

3. Nirmala was dismissed from the position of a Manager of the press with effect from 1-1-1952. Information of this fact was conveyed to the Chief Inspector of Factories, as required by the provisions of Section 7 of the Factories Act. The payment of wages matter came up for hearing before the Magistrate on 6-5-1952. On this date Nirmala appeared and informed the Court that he had been dismissed, and he had, therefore, no further authority or responsibility in respect of the matter pending adjudication. Nirmala also gave information to the Magistrate that Godse was the proprietor and that he should be asked to place the case of the employer before the Magistrate. The learned Magistrate, however, gave no notice to Godse, but made an order u/s 15, Payment of Wages Act, against Nirmala. Section 15(3) is in these words:--

""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 enquiry (if any), as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding ten rupees in the latter:

Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to-

- (a) a bona fide error or bona fide dispute as to the amount payable to the employed person, or
- (b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or
- (c) the failure of the employed person to apply for or accept payment."

4. On the date on which the order was made, namely, on 6-5-1952, Nirmala could not be held to be a person who could be responsible for the payment of the wages of the workmen u/s 3. The person who was and could be responsible for the payment of the wages u/s 3 on 6-5-1952, was Godse, for he was not only the proprietor on that date but was also the Manager of the press, for he had himself so notified the fact to the Chief Inspector of Factories on 5-1-1952. The wages could not, therefore, be recovered from Nirmala. The Magistrate, later, made an order u/s 19, Payment of Wages Act, for the recovery of the amount of wages found due. Section 19 is in these words:--

"When the authority referred to in Section 15 or the Court referred to in Section

17 is unable to recover from any person (other than an employer) responsible u/s 3 for the payment of wages any amount directed by such authority u/s 15 or Section 17 to be paid by such person, the authority shall recover the amount from the employer of the employed person concerned."

The jurisdiction to make an order u/s 19 arises after there has been a proper order made u/s 15 or u/s 17. If the order made u/s 15 was a bad order, that is to say, was made without due compliance with the requirements of that section, then obviously the sum directed to be paid u/s 15 could not be made recoverable by a subsequent order u/s 19. The learned Judge has dismissed the appeal apparently, on the view that at the date when the wages fell due Nirmala was one of the persons who was responsible for the payment of such wages u/s 3 and, therefore, Nirmala's responsibility subsisted, and since Nirmala was before the Court on 6-5-1952, when the case was disposed of, there was a proper representation.

I may, however, point out that the Court below has not put the matter in the same way in which I have put it, though I think, that that is what the Court meant to say. As I read Section 15(3) I read it to mean that a hearing has to be given to that person who, on the date of the hearing, is responsible for the payment of wages u/s 3. A Manager, who has been dismissed, can have no subsisting responsibility for wages that fell due while he was a Manager and question about which was being raised subsequent to his dismissal.

Indeed, the Magistrate has also found that there was no responsibility in Nirmala to make the payment, and the amounts awarded to the employees could not be recovered from Nirmala. The person who was, therefore, responsible for payment of the wages u/s 3 on 6-5-1952, was Godse, and under the provisions of Section 15 no order could be made in the cause without giving him an opportunity to be heard. This was not a case of mere formality for the defence, because there was, in this case, a contention raised on behalf of the employer that wages were payable in this case in terms of a compromise which had been effected between the parties in the industrial dispute. There was, therefore, a substantial question to be gone into before final orders in the matter could have been made by the Magistrate.

It is one of the fundamental principles of justice that no order can or should be made against a party without giving him an opportunity of being heard. The person from whom the amount is now being recovered, namely, Godse, has had no opportunity either directly or through a properly constituted representative to have his point of view placed before the authority who had the jurisdiction to decide this matter. The fact, therefore, that the ultimate responsibility for paying the wages is rested on the proprietor or owner u/s 19 does not make the order which was made by the Court below legal, for, as I have already pointed out, a proper order u/s 19 can only be made after there has been a proper and legal order u/s 15 of the Act.

5. For the reasons given above, I am of the view that the order of the learned Magistrate and of the learned District Judge should be set aside as being illegal and without jurisdiction, and I accordingly set them aside. The case will now go back to the authority nominated under the Payment of Wages Act for the area to decide the matter in accordance with law. There has been no representation of the opposite parties before me in this cause. I, therefore, make no order as to the costs of this petition.