

RAJASTHAN HIGH COURT

Maharaja Shri Umaid Mills Ltd.

Vs.

Collector

Civil Writ No. 274 of 1958
(Modi and Chhangani, JJ.)

11.11.1959

JUDGMENT

Modi, J.

1. This is a writ application by the Maharaja Shri Umaid Mills Ltd. Pali through its manager under Art. 226 and 227 of the Constitution challenging an order of the District Magistrate, Pali, dated the 17th October, 1958, the Authority appointed under the Payment of Wages Act, 1936 (No. IV of 1936) (hereinafter referred to as the Act) in circumstances presently to be mentioned.

2. The opposite parties Nos. 2 to 52 are workmen of the aforesaid Mills in its weaving department. They made an application to the said authority, (which was not dated but must have been filed before the 25th August, 1958), stating that "the authorities of Mills have unlawfully started deducting the above said ₹ 1/- attendance price every month from our monthly wages from March 1958 upto now and also for future. Whereas such deduction of attendance price exists in any books of Indian Labour Laws and Industrial Legislation. This approach is in accordance with Payment of Wages Act, 1936." This is almost the entire application which was filed by the opposite parties before the Authority. Thereupon a notice was issued to the petitioner on the 25th August, 1958, asking him to see the Authority on the 26th August, 1958. A reply was filed on behalf of the petitioner on the 10th October, 1958, in which several objections to the maintainability of the application of the opposite parties were raised. It was submitted that a payment of rupee one per mensem was made in the past as a prize to encourage the habit of regularity in attendance among the workers but that such a prize did not fall within the definition of the term "wages" as defined in the

Act, and, therefore, the application of the opposite parties was misconceived and not maintainable in law. It was further submitted that this arrangement was in vogue in accordance with an earlier award based on a settlement which had been arrived at between the parties in 1955, but thereafter a subsequent settlement had been arrived at on the 26th February, 1958 between the management and two trade unions of the workers of the Mills, namely, The Textile Labor Union and the Rashtriya Mazdoor Congress, both of which were functioning at all relevant times and which between them represented all the workmen, by virtue whereof certain additional benefits such as bonus and gratuity were given to the workers and the attendance prize in question was abolished. It was also submitted that the opposite parties as also the other workmen of the Mills were enjoying the additional benefits in accordance with these settlements, and, therefore, they were not entitled to claim the attendance prize in question. It may also be pointed out here that it is common ground before us that an industrial dispute has been raised by some of the workmen with reference to the binding nature of these settlements and that is pending before the Industrial Tribunal of this State. Lastly, it was urged that the application made by the opposite parties was entirely irregular inasmuch as it did not specify the value of the relief sought by them nor they claimed any relief, and even the allegations made therein had not been certified as required by form B of the application provided under Appendix 1 of the Act. It was, therefore, prayed that the application should be dismissed on that ground alone. On the 10th October, 1958, however the matter did not make any further progress, and the case was adjourned to the 17th October, 1958, at the request of the opposite parties who stated that they wished to file a rejoinder (see Ex. C.). No rejoinder was, however, filed on the 17th October, and it appears that arguments were heard on that very day, and the Authority eventually held that the application of the opposite parties had force and that whatever amount had been deducted should be paid. As for the argument advanced on behalf of the petitioner that the attendance prize had been stopped as a result of the settlements arrived at between the petitioner and its workmen dated the 26th February, 1958, the Authority held that such settlements were null and void by virtue of sec. 23 of the Act, and therefore, they were of no force. The Authority also seems to have held that the alleged deduction was bad because the provisions of sec. 8 of the Act had not been complied with, no notice having been exhibited in that behalf under sub-sec. (2) of sec. 8 (this has been obviously mis-described as a proviso), although it is difficult to see how that section had any relevance, because it deals with the matter of fines, and not with the withholding of any allowance like the one with which we are concerned in the present

case. It is this order which is being impugned in the present application.

3. The application is opposed by the opposite parties, mainly on the grounds that although settlement was arrived at between the management and the two trade unions on the 26th February, 1958, the latter did not represent the majority of the workmen including the opposite parties, and so they could not be held to be bound by it and that the revised wage structure brought about by the aforesaid settlement had in fact reduced the wages of the workmen and did not benefit them and in any case such a settlement was void under sec. 23 of the Act and the opposite parties could not therefore be held bound to it in any manner whatsoever.

4. At the very outset, we should like to observe that the Authority under the Payment of Wages Act who was the District Magistrate in the present case should have seen to it that there was a proper application before him to enable him to take proper proceedings under the Act. The application filed by the opposite parties before the Authority has been set out almost in extenso above, and we would unhesitatingly say that it is a model of what an application under the Act ought not to be. Leaving aside minor defects altogether, the application complains of an illegal deduction of wages. But strangely enough, it does not mention what was the quantum of the wage of the workers per month at the material times before the alleged deduction and after it and no reference to a subsisting contract is made in that connection. Again, the application does not specify any value of the relief claimed. Nor does the application mention any relief which was sought to be prayed for. R. 3 of the Payment of Wages Procedure Rules read with sec. 16 of the Act clearly provides inter alia that a single application made by a group of persons under sec. 15(2) of the Act shall be in Form B prescribed under the Rules. Last but not the least, the application does not bear any certificate by the applicants as required under the rules to the effect that the statement of facts contained in the application was correct to the best of their knowledge or belief as the case may be. We have taken this opportunity of pointing out some of the glaring defects of the application in question to indicate our disapproval of the entertaining of such applications, and to ensure do future that the Authority under the Act sees to it that he must have a proper application in accordance with law, presented to him before he entertains the same or gives his verdict on it. The importance of what we have pointed out above would, we hope, unmistakably appear to all those concerned when we invite attention to sec. 22 of the Act which bars the jurisdiction of civil courts to entertain any suit in respect of all claimers which, broadly speaking, fall within the

scope of this Act. It must be remembered that the scheme of the Act is to set up a special tribunal with a special jurisdiction conferred upon it and to oust the jurisdiction of the civil courts to the extent of such special jurisdiction.

5. This brings us to the merits of the order passed by the Authority in the present case. The factual position which was not disputed before us is somewhat like this. It is common ground that the opposite parties (as also some other workmen in the Mills) used to, get an attendance prize of ₹ 1/- per month provided that they did not absent themselves for more than three days in a month in accordance with an industrial award made prior to the 26th February, 1958. For some time prior to the last-mentioned date differences arose between the parties and so two fresh settlements (Exs. E. and F.) were come to between the parties, and the workmen were represented therein by two Unions, namely, the Textile Labor Union and the Rashtriya Mazdoor Congress Pali. According to the petitioner, these organizations represented all the workmen numbering about 2600 workmen in the Mills, though the opposite parties seem to dispute this. Be that as it may, by these two settlements, the whole workload and the wage structure was revised and it, is claimed by the petitioner, which is not disputed, that the system of paying gratuity to the workmen was introduced for the first time which did not exist before. Since 5th March, 1958, all the workmen, including the opposite parties, have been working on the basis so revised. It is important to mention in this connection that from the date of these settlements the earlier award dated the 23rd February, 1955, published in the Rajasthan Rajpatra dated the 26th February 1955, was to stand terminated. By clause (5) of the settlement it was provided that the adjustments of personal allowance, personal dearness allowance and attendance prize in case of old rate piece workers was to be as mentioned in schedule G and this is how the so called attendance prize has come to be abolished. The position which emerges from the aforementioned facts is that according to the petitioner the terms of employment subsist at the time of the application before the Authority were governed by the settlements dated the 26th February, 1958, and the earlier award dated the 23rd February, 1955, no longer remained in operation.

6. In order to complete the picture, it is necessary to mention that an industrial dispute having lately been raised with respect to this settlement by some of the workmen who claimed not to belong to either of the Trade Unions who took part in the settlement and were signatories to it, the State Government, by its notification dated the 8th May, 1959 published in the Rajasthan Rajpatra dated the 2nd July, 1959, has made a

reference to the Industrial Tribunal of the State as to whether the said settlement had reduced the total emoluments of the workers by its operation and whether the agreement can be said to be operative on workmen who did not belong to either of the Unions and if so to what relief they were entitled.

7. Against this background, the question to determine is whether the abolition of the so called attendance prize amounts to a deduction of wages within the meaning of the Act. Or putting the matter in a slightly different manner, the question is whether the Authority under the Act had or would have jurisdiction to deal with the matter which was brought before it for a direction in the circumstances of the case.

8. On a most careful and anxious consideration of this question, our answer to it is in the negative. As we have already pointed out above, the Act we are called upon to construe is a special Act, and has a limited scope, but within its proper limits has an exclusive jurisdiction and bars the jurisdiction of civil courts altogether. The object of the Act is to eliminate all avoidable delays in the payment of wages to workmen within the meaning of this Act and to protect them from unlawful deductions in the payment of their wages. As held in *Arvind Mills v. K. R. Gadgil*¹ In the general purpose of the Act is to ensure that employed persons shall be paid their wages in a particular form and at regular intervals and without any an authorized deductions. Now, the term "wages" has been defined by sec. 2(vi) of the Act. It is unnecessary to quote this definition as we shall assume for our present purposes without pronouncing any definite opinion on it that the prize attendance falls within the ambit of this definition. All the same, it is important to remember that the term "wages", shown of all verbiage, means remuneration in terms of money payable by an employer to his employee for services rendered according to the terms of the contract between them. See *Divisional Engineer, G. I. P. Rly. v. Mahadeo*,² Sec. 7 specifies the permissible deductions from such wages, and all other deductions would therefore be unlawful. But where the real dispute is as regards the very contract by which wages are to be governed in a particular case, such a dispute is a mere fundamental one and seems tauts to fall outside the scope of this Act which is indeed limited. Thus, where the employer relies on one contract which according to his submission is the subsisting contract and governs the quantum of wages payable at all material times, but the employed persons repudiate such a contract and contend that their wages are governed by another contract, so that the wages claimed or the deductions complained against would be valid or not according as the one or the other contract is adjudged to be the

operative one, then such a controversy is, in our considered opinion, foreign to the limited scope of the Act and cannot be legitimately decided by any authority appointed under the Act. The essential dispute in such a case lies, if we may say so, far deeper and involves the determination of issues far more serious and complicated and must be left to other competent tribunals or courts to decide.

9. An almost parallel case came before the Bombay High Court in *Anthony S. Almeda v. R. M. Taylor*,³ The following observations of Chagla C. J. who delivered the judgment of the Bench are opposite and may well be reproduced here:

"What the Authority is asked to decide is not what is the contract between the employer and the employee but which is the contract which regulates the terms of employment between the parties.

In our opinion, the jurisdiction of the Authority is limited to decide what is the contract in the sense of constructing the contract in order to determine the liability of the employer to pay wages. But when the employer and the employee come before him and rely on different contracts, it is not within his jurisdiction to decide which of the two contracts holds the field, which of them is subsisting and under which of them the employer is liable to pay wages." (the italic is ours)

This case was later approved by a Full Bench of the Bombay High Court in *Viswanath Tukaram v. G. M., Central Rly.*,⁴ and if we may say so, with all respect, enunciates the correct, principle.

10. Summing up the whole position, therefore, we may say that where the essential question is really not as to what the wages of the persons aggrieved were nor that there was any delay in the payment of those wages nor still that there was any unlawful deduction from such wage, but the question is whether the wages fall rightly to be governed by a contract relied upon by the employer as the subsisting contract or whether it falls to be governed by an earlier contract relied upon by the employed persons and the validity of the subsisting contract is challenged, and the question is which of the two contracts would or should govern the relationship of the parties, then the Authority under the Act in question has no jurisdiction to decide which of the contracts should regulate the rights of the parties. We hold accordingly.

11. It was next contended before us that the cases of The Bombay High Court to which we have referred above have not considered sec. 23 of the Act and therefore they

should not be accepted as laying down the sound law, and that the authority in the present case had rightly held that the agreements of 1956 were void by virtue of sec. 23 and, therefore, the earlier award of 1955 still held the field. We have carefully considered this argument and have not felt impressed by it. Sec. 23 reads as follows:

"Any contract or agreement whether made right conferred by this Act shall be null and void before or after the commencement of this Act in so far as it purports to deprive him of such whereby an employed person relinquishes any right."

The contracts which are made null and void by this section, even though they might have been entered into before the commencement of this Act, are those which relate to rights conferred by this Act but not to others. The only rights which according to its main provisions, it confers are that the persons employed in certain industries shall receive their "agreed" wages in the prescribed form without delay and without any unlawful fines or deductions from their wages. It clearly seems to us that the Act does not confer any right to receive a particular wage irrespective of agreement between the parties nor even that it bans all alterations in the structure of wages which might be occasioned by the exigencies of a particular industry, at a particular time, by mutual agreements arrived at between the employer and the persons employed. All that this section, therefore, enjoins is that the rights of an employed person to receive a regular payment of his wage which has been conferred upon him by sec. 4, 5 and 6 or his right to receive his wages without deductions of any kind except those permitted by sec. 7 and sec. 8 shall be preserved to him in tact notwithstanding any contract to the contrary which might have been made between the employer and the employees whether before or after the commencement of this Act. The section does not ban any other contracts. This provision of law, therefore, in no way, affects the conclusion at which we have arrived in the foregoing part of our judgment and we have no doubt that the Authority under the Act in the present case fell into a palpable and manifest error when it came to the conclusion that the agreement dated the 26th February, 1956, was null and void and of no effect by virtue of the provision contained in sec. 23 of the Act. We are categorically of the view that sec. 23 is not at all attracted into application in the circumstances of this case and we hold accordingly.

12. For the foregoing reasons, it must inevitably follow that the order of the Authority under the Act is bad for want of jurisdiction and cannot be sustained. We, therefore,

allow this application and quash the impugned order dated the 17th October, 1958, but without any order as to costs.

Cases Referred.

1. A.I.R 1941 Bom 26
2. A.I.R 1955 S.C 295
3. A.I.R 1956 Bom 737
4. A.I.R 1958 Bom 111