

Millennium Commodities Pvt. Ltd. Vs. The State of West Bengal and Ors.

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Court : Kolkata

Decided On : Dec-22-2015

Judge : I. P. Mukerji

Appellant : Millennium Commodities Pvt. Ltd.

Respondent : The State of West Bengal and Ors.

Judgement :

WP No.1143 OF 2015 IN THE HIGH COURT AT CALCUTTA Constitutional Writ Jurisdiction Original Side Millennium Commodities PVT.LTD.versus The State of West Bengal & ORS.For the petitioner:- Ms.Shruti Agarwal, For the Private Respondents: Mr.A.Basu Mr.D.K.Chandra, Advocate Advocates For the State: Mr.S.Roy Chowdhury Mr.M.K.Sadhu, Advocates Judgement On: - 22.12.2015 I.P.MUKERJI, J.

Very fine points of law are involved in this application.

Under section 14 of the West Bengal Shops and Establishments Act, 1963, any question with regard to nonpayment or short payment of wages is referred to a Referee.

Tapabrata Sinha, an employee with Millennium Commodities PVT.LTD.on 10th June, 2014 made an application before the Referee.

He is the private respondent in this writ preferred by the employer.

He alleged that his wages amounting to Rs.7,37,955/- were not paid between February, 2012 to May 2014.

He also claimed compensation amounting to Rs.52,900/-.

The employer company filed before the Referee what was described as a preliminary objection.

They said that when the private respondent was confronted by them with the allegation of misappropriation of money from the establishment, he stopped coming to the office on and from 1st September, 2012.

His wages till 31st August, 2012 have been paid by the organisation.

The employer levelled very serious allegations of dishonesty, breach of trust, theft, misappropriation etc.against the private respondent.

They say that they have a counter claim against him.

The preliminary objection raised by the employer before the Referee was this: He had jurisdiction only to determine nonpayment or short payment of wages.

The issue in the case was whether the private respondent was at all entitled to wages for leaving the employment of the employer from September, 2012?.

He had no jurisdiction to determine this.

The Referee made his order on 15th July, 2015.

It is difficult to clearly understand the entire order.

But what appears to me is that according to him the point of maintainability raised by the employer could only be considered after adjudication.

The employer is aggrieved by these findings.

Their point of maintainability is that the Referee had only the jurisdiction to decide cases involved non-payment or short payment of wages.

The specific case of the employer is that since from September, 2012 the private respondent left the employment and is not entitled to any wages at all, the issue is regarding entitlement to wages and not, non-payment or short payment of wages.

Secondly, the employer has a claim against the petitioner.

When the question of entitlement is raised before the Referee, he has no power to determine the same.

He lacks the jurisdiction to do so.

Therefore, by proposing to make an adjudication of the entire dispute between the parties the Referee has indicated an intention to decide the entitlement issue also and has thereby committed an error.

He ought to have decided whether the issue of entitlement of wages was involved and if the answer was in the affirmative he should have declined jurisdiction, it was submitted by Ms. Shruti Agarwal, learned counsel to the employer.

Aggrieved by this order of the Referee, the employer has preferred this writ application.

In most cases the statute grants power to an adjudicating authority to decide whether he has or has not the jurisdiction over the subject matter of the dispute.

In this case also this is true.

This is so because in every case where the question of non-payment or short payment of wages is raised, the employer would take the point of non-entitlement of the applicant employee to it.

If the adjudicating authority did not have the power to do decide whether he had jurisdiction, he would have to automatically relinquish his jurisdiction in almost each and every case.

This would lead to an absurd result, in my opinion.

In my opinion the Referee did not decide his jurisdiction.

He had a clear duty to determine after going through the application the objection made by the employer and the evidence, if necessary as to whether any question of entitlement of the employee to wages was involved.

He had to determine whether the employee worked in and after September 2012.

If the answer was that he had not worked then the question of entitlement of the private respondent to get wages automatically arose.

It would also arise if the employee worked but the employer had a genuine counter claim against him.

In that event the Referee had to relinquish his jurisdiction.

Only in cases where the service of the petitioner is undisputed or proved and the issue relates to non or short payment of wages only, can the Referee enter into the dispute.

In my opinion he ought to have decided this jurisdictional question first, even by taking evidence, after framing all the issues.

This point was eloquently explained by Justice MRS.Padma Khastgir delivering the judgement of a division bench of our court in M/s Gupta Electric Company & Anr.

versus The learned Chief Judge, Small Causes Court at Calcutta & ORS.reported in 1993 (II) CHN168, in the following manner: 4.

The question involved before this court is for determination as to the question of jurisdiction and/ or exceeding such jurisdiction by the court below.

If it is a question of jurisdiction or the excess of jurisdiction exercised by the court below it becomes a question of law which could be properly dealt with by this court in the present application.

If under the Shops and Establishments Act, the learned Referee has no jurisdiction to enter into the disputed question of fact and/or question of law and there is

exercise of such jurisdiction in respect of disputed question of fact and/or question of law involving its jurisdiction then it would amount to erroneous exercise of jurisdiction which can be corrected by this court in the present application.

So, if the employee does not do the work for the specified period or of the specified amount he has no right to get the remuneration pro rata at least where the remuneration is payable monthly.

Relying upon the said decision it was urged on behalf of the petitioner that admittedly when the petitioner (?) has not rendered any service, the question of payment of wages for that period does not arise under the Shops and Establishments Act.

As observed earlier, the learned Referee cannot enter into the disputed question of fact as to whether there has been a wrongful determination and as to whether the claimant has been wrongfully debarred from attending to his work which is outside the domain and/or jurisdiction of the learned Referee in as much as serious disputes have been raised with regard thereto.

In such circumstances on the ground of expediency the Authority under the Act should not entertain complicated questions of facts and law relating to claim of wages and such claim should be left to be decided by the authority under the Industrial Disputes Act which is a special Act for dealing with all questions between the workmen and the employer. In Bharat Chamber of Commerce and Anr.

versus State of West Bengal and ORS.reported in 2011 (1) CHN272 Mr.Justice Aniruddha Bose appreciated this principle when his lordship said:
6.***** The fiRs.point to be decided by me is whether the instant case filed by the Applicant is actually a case for recovery of unlawfully deducted wages as applied for by the Applicant or is a case of non-entitlement of wages as claimed by the opposite party.

***** 9.

The position of law appears to be that if there has been ex facie illegal deduction of wages, the Referee can exercise his or her jurisdiction under section 14 of the 1963 Act.

But if the employer seeks to justify deduction of wages on a prima facie legitimate ground then it would not be within the jurisdiction of the Referee to issue recovery order.

11. This question in my view is a dispute which requires to be determined on the basis of construction of the terms of employment, which may require adjudication on evidence.

This has to be done by way of making adjudication of the claims of the respective parties.

In my opinion, the Referee does not have jurisdiction to determine this question.

I find from the orders impugned that the Referee has come to a finding that supplying tea and drinking water to the staff members of the Petitioner No.1 was not part of the duty of the Respondent No.3.

This is impermissible, and adjudication on this count was beyond the jurisdiction of the Referee.

Under these circumstances both these writ petitions are allowed.

The impugned orders dated 31st August, 2009 shall stand quashed. I also make it clear that the Referee also has the power to evaluate, prima facie, the defence or counter claim of the employer.

If he finds that the defence is prima facie meritless and frivolous and has been raised to deprive the Referee of his jurisdiction, he may make a finding to that effect and proceed according to law.

The point of maintainability of this writ on the ground that the Act provides for an appeal has no substance.

In Whirlpool Corporation versus Registrar of Trade Marks, Mumbai and Others reported in (1998) 8 SCC1 the Supreme Court clearly said that when a question of jurisdiction was involved a writ would lie to the High Court.

I quote paragraph 15: 15.

Under Article 226 of the Constitution, The High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition.

But the High court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High court would not normally exercise its jurisdiction.

But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field. In those circumstances, this writ application is disposed of by quashing the impugned order of the Referee dated 15th July, 2015 and directing the Referee to determine his jurisdiction in accordance with the observations above and in accordance with law and also determine other issues, if permissible, within three months from the date of communication of this order.

Certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(I.P.MUKERJI, J.)

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