

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO. 29973 OF 2016**

M/s Oil And Natural Gas Corporation Ltd.

..Petitioner

Vs.

**The Regional Labour Commissioner
(Central) Bombay & Ors.**

..Respondents

**Mr. S. K. Talsania Senior Advocate a/w Mr. Subhash Bhalwal and Mr. Viraj
Kandpile i/b Vyas & Bhalwal for the Petitioner**

Mr. Advait Sethna a/w Mr. H. V. Mehta for the Respondent No.4

Mr. Shaligram Mishra President of Respondent No.2 Union present

CORAM : R. M. SAVANT, J.

DATE : 26th OCTOBER, 2016

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 29-9-2016 passed by the Learned Judge of the Small Causes Court, Bombay by which order the Appeal filed by the Petitioner being P.W. Appeal No.2 of 2016 came to be dismissed, resultantly the order dated 9-10-2015 passed by the Competent Authority under the Payment of Wages Act 1936, came to be confirmed.

2 The Respondent is a Union which espoused the cause of about 5 workmen who were working as security guards and were deployed in the housing colonies of the Petitioner. The Respondent Union filed an application under Section 15 of the Payment and Wages Act for recovery of the unpaid

wages for the period April 2014 to December 2014 though in the application it has been stated that the recovery was sought for the period December 2013 to December 2014. It was the case of the Respondent that though the said workmen had worked during the said period they had not been paid the wages. The record discloses that the said workers were engaged by the Petitioner through the Respondent No.3 who was the contractor. It is the case of the Petitioner and the Respondent No.3 whilst opposing the said application that on account of a theft which had taken place in one of the housing colonies of the Petitioner, the said workers were redeployed by the Respondent No.3 contractor at some other places. It seems that the said workers did not report for joining at the transferred place and continued to work at the place i.e. housing colonies of the Petitioner from which they were transferred. It was therefore the case of the Respondent No.3 that the said 5 workers were not entitled for wages having not worked at the place of transfer. The said stand was also adopted by the Petitioner. The Petitioner also took exception to the maintainability inter alia on the ground that the wages of the 5 workmen were in excess of Rs.18000/- and that the Petitioner as the principal employer could not be made liable for the payment of the said wages.

3 The Competent Authority under the Payment of Wages Act addressed the said application filed by the Respondent No.2 Union from the said stand point. The Competent Authority held that the wages shown in the

table annexed to the said application included overtime wages and held that the over time wages could not be taken into consideration for considering whether the said workmen qualify under Section 1(6) for filing an application under the said Act. The Competent Authority held that the wages contemplated by Section 1(6) are contractual wages and not overtime wages. The Competent Authority further observed that Clause (b) of Section 2 says that wages includes overtime wages only in order to keep the workman not deprived of his rightful earnings. Hence according to the Competent Authority the interpretation ought to be such as not to deprive the workman from filing an application so as to invoke the beneficial provisions of the said Act. This seems to be the undertone of the Competent Authority whilst dealing with the said issue. The Competent Authority relied upon the judgment in Baboo Hussain Vs. N. P. Nopany reported in 1978(37) FLR Page 10 (GUJ)

4 In so far as the liability of the Petitioner is concerned, the Competent Authority held that the workmen in question seem to be working with the Petitioner since the last 15 years and that they have been shown as the contractor workers only from the year 2014. The Competent Authority also adverted to the fact that the Petitioner had entered into agreements in respect of wages rise etc., in respect of the workers who were working with the Petitioner for a long time though shown engaged through the contractors. The Competent Authority thereafter referred to the various labour legislation

wherein it is the liability of the principal employer to discharge the obligations towards the payment of wages to even those employees who are appointed on contract. The Competent Authority answered the said issue also against the Petitioner.

5 At this stage it is required to be noted that the Competent Authority had directed the inspector under the Act and the Labour Enforcement Officer (Central) Shri D. S. Jadhav to visit the places of work of the 5 workmen and enquire into whether the workmen were actually working or not at the locations. The said inspector accordingly submitted a fact finding report dated 21-5-2015 wherein it has recorded that the said inspector has visited the locations and interacted with the Presidents of the Resident Welfare Association of Bandra and JVPD colonies and has also seen the attendance of the workmen marked in the register maintained at the entry gate of the colony duly attested by them. On the basis of the said material, the inspector reported that the workmen have been on duty in the premises of the Petitioner during the period April 2014 to December 2014. Hence there was independent material on record by way of the Inspectors report which the Competent Authority has taken into consideration. The Competent Authority also took note of the fact that there was no material placed on record to show that after the transfer of 5 workmen some other workmen were deployed for security in their place which fact according to the Competent Authority also indicated

that the workmen have discharged their duties at the place from which they were transferred. The Competent Authority accordingly by its order dated 9-10-2015 allowed the application and directed the Petitioner to make payment of unpaid wages amounting to Rs.13,92,129/- along with additional amount of Rs.39,000/- (each workman) towards the compensation for the period December 2013 to December 2014 either directly or through the Respondent No.3 herein.

6 The Petitioner aggrieved by the said order dated 9-10-2014 filed an Appeal under the provisions of Section 17 of the said Act in the Small Causes Court at Bombay. The Learned Judge of the Small Causes Court has confirmed the findings of the Competent Authority and dismissed the Appeal filed by the Petitioner by the impugned order dated 29-9-2016.

7 The Learned Senior Counsel Mr. Talsania appearing on behalf of the Petitioner sought to reiterate the contentions raised by the Petitioner before the Competent Authority as well as the Appellate Court in the Appeal revolving around the maintainability of the application and the liability of the Petitioner as the principal employer.

8 In my view, it is not possible to accept the said contentions raised by the Learned Senior Counsel having regard to the concurrent orders passed

by the Competent Authority as well as the Appellate Court on all the issues raised by the Petitioner. In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out, the Writ Petition is accordingly dismissed.

9 At this stage the Learned Senior Counsel appearing for the Petitioner applies for stay of the disbursal of the amount pursuant to the orders passed by the Competent Authority as confirmed by the Appellate Court.

10 In the facts and circumstances of the case, the disbursal of the amount is stayed for a period of 4 weeks from date.

[R.M.SAVANT, J]