IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 14951 of 1997
Date of Decision: 25.4.2017

Indane Bottling Plant through the Manager (IR) N.C. Sinha

... Petitioner

Versus

The Authority under the Payment of Wages Act and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Paul S.Saini, Advocate for the petitioner

Mr.G.P.Singh, Advocate for respondent/workmen

Mr.Ashish Gupta, Advocate for respondent no.2

RAJIV NARAIN RAINA, J. (Oral)

1. This petition has been filed laying challenge to the order passed by the Authority under the Payment of Wages Act, 1936 (for short "the Act") for Karnal in Application No.1 of 1996. The petitioner is the Indane Bottling Plant at Village Gudha, District Karnal. Respondent no.3 alongwith 36 others instituted an application under Sections 15 and 16 of the Act claiming that they have been paid wages less than the minimum wages fixed by the Haryana Government for the period claimed from January, 1995 to May, 1995 and therefore, they were legally entitled to the difference of wages paid and the revised wages notified as minimum wages under the Minimum Wages Act for the category of work that the applicants perform for the employer.

2. The claim set up was allowed by the authority against the contractor-respondent no.2. It is not in dispute that the Indane Bottling Plant and the contractor were bound by a contract in writing and

therefore, under the Contract Labour (Regulation & Abolition) Act, 1970 (for short the "CLRA Act of 1970") both the parties to the contract were bound one way or the other under a licence/registration to share the statutory burden of current wages. Therefore, Indane Bottling Plant could not disown the applicants and this is how the authority has saddled the Contractor after drawing a negative inference against respondent no.2, namely, D.S.Goel & Company i.e. the Contractor on failure of party to appear on the date of hearing despite registered notices sent by the authority at their addresses. The authority found nothing on file to disbelieve the statements tendered on oath by the applicants. They had a right to payment of the difference of wages between those paid and those notified as minimum wages during the period claimed and such enhanced wages fixed by the Collector of the district have to be read into the contract and made adjustable even though the contract may not speak of this. This is for the reason that the liability is statutory which employer or his agent are by law prohibited from contracting out of the statute and especially in social beneficial legislation, which are to be construed strictly in favour of the working classes. In this manner, the Authority fastened the liability on the first respondent which was the middleman M/s D.S.Goyat & Company, the Labour Contractor of the petitioner.

3. Having heard the learned counsel for the parties, I find no reason for nit picking with the order passed by the Authority. The brief order passed by the authority contains good enough reasons in support of the conclusion to allow the claim application. There is no fundamental flaw or error of reasoning in the short order which might vitiate the same. The order is endorsed by me as enforceable in law.

4. However, as the case stands presently since the direction created liability on the 2nd respondent and not Indane Bottling Plant, then the Indane Bottling Plant is held responsible for payment of money as the principal employer and it may recover the amount ordered from the Contractor on the principle of "pay and recover" aftet discharging its liability in the first instance. This mechanism is supported by Section 21 (4) of the CLRA Act of 1970.

5. Mr.G.P.Singh, learned counsel for the claimant workmen appropriately cites authority in support of his stand which is based on the Supreme Court judgment in *Senior Regional Manager, Food Corporation of India, Calcutta vs. Tulsi Das Bauri*, AIR 1997 SC 2446 decided under the CLRA Act of 1970. The Supreme Court held that the liability is on principal employer and in case the Contractor fails to make payment of wages or part of the wages to the workers, the principal employer is liable to make payments with liberty to recover the same from the bills or otherwise from the contractor. The Supreme Court held that term "wages" includes arrears of wages. This judgment concludes the matter against the petitioner for the time being so that the usufruct of the claim percolates to the workers.

6. Accordingly, this petition is dismissed. However, the petitioner is granted right to recover the amount from the contractor and the contractor would also have the concomitant right to take all its pleas and defences as are available in law to ward off the liability. That is a matter between the two payers. Needless to say that this order will not be treated as final between the principal employer and the contractor before the forum where the proceedings are brought, if any, which if filed will be decided in accordance with law and the Authority/Forum will be free to

reach its conclusions as per law on the question of cause of action and the right to sue.

7. Since the workers have been deprived of the enhanced minimum wages during the period claimed, then compensatory amends have to be made by the principal employer in the first instance by adding the element of interest beyond the point of declaration of the workmen's rights by the Authority in its order passed in 1996. Any delay thereafter would invite interest since the principal amount of difference of wages paid and payable has been lying in the coffers of the payees. The question is as to how much interest should be payable to the workmen on the unpaid principal amounts granted by the Authority. In the facts and circumstances of the present case, I believe that ends of justice will be served if interest as prescribed under the Code of Civil Procedure, 1908 should run at the rate of 6% per annum, in view of long passage of time and then this amount should be burdened either on the principal employer or on the contractor at the end of the day as between them by agreement or by litigation.

8. Mr. Paul Singh Saini, learned counsel for the petitioner argues that there is a stay operating in the case, and therefore, no interest should run. This is an argument which has to be rejected. A stay order does not create any right which is in discretionary ad interim relief and is provisional until it is made absolute by the court after appreciating the relative merits of the case of both the parties, which is not the position in the present case. The stay order only postpones implementation of the order impugned in a case brought to court.

9. With the aforesaid observations and directions, this petition is dismissed with the above directions in satisfaction of the decree of the

Authority. The same be computed in terms of money including interest element by the petitioner and the sums determined be paid to the claimants within three months from the date of receipt of the certified copy of the order.

(RAJIV NARAIN RAINA)
25.4.2017 **JUDGE**

MFK

Whether speaking/reasoned *Yes*

Whether Reportable *No*