

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Aniruddha Roy

W.P.A. 25880 OF 2024

State Bank of India & Anr.

Vs.

Union of India & Ors.

For the petitioners : Mr. Soumya Majumdar
Mr. Debashis Saha
Mr. Avirup Roy Sanyal
Ms. Sucheta Pal.

For the Respondent
No.1. : Mr. Dwijadas Chakraborty
Mr. Rajesh Kumar Shah.

For the Respondent
No.3 : Mr. Ratul Das
Mr. Ashutosh Singh.

Heard on : November 06, 2024

Judgment on : November 06, 2024

Aniruddha Roy, J. :

Facts:

1. Affidavit-of-service, filed in Court today, is taken on record.
2. Through this writ petition the State Bank of India (for short SBI),

the principal employer has challenged the impugned order dated **September 6, 2024, Annexure-P11 at page 140** to the writ petition. The impugned order was passed by the respondent no.2 in **Claim Case No. M.W.11 of 2020** (for short the claim application).

3. The principal issue involved for adjudication before this Court is whether the respondent no.2, the adjudicating authority while passing the impugned order has committed any error of jurisdiction, law and whether there is any infirmity in his decision making process.
4. The facts which are essential are only narrated. The SBI by virtue of a parent agreement dated **March 7, 2016, Annexure-P1 at page 22** to the writ petition appointed the respondent no.3 to undertake **Comprehensive Caretaker Services** under the terms and conditions mentioned therein. The scope of work under the said parent agreement has been described in **Clause 2.2** therein at **page 37** to the writ petition. Subsequently, a supplementary agreement for **Caretaker Services** was executed dated **July 20, 2018, Annexure-P3 at page 92** to the writ petition on the terms and conditions mentioned therein and the specification of and scope of services are enumerated in **Clause 2.2** therein at **page 94** to the writ petition.
5. Disputes arose between the respondent no.3 and the individuals employed by the respondent no.3 to provide services to SBI under the said two agreements with regard to the fixation and payment of wages.

A complaint was lodged by the **Labour Enforcement Officer (Central), Asansol – I** under **Sub-Section (3) to Section 20** of the **Minimum Wages Act, 1948** (for short Minimum Wages Act). The complaint is available at **page 103** to the writ petition. The complaint shows that, the SBI was not impleaded and the respondent no.3 was the only opponent.

6. The complaint was considered by the respondent no.2, the adjudicating authority. In course of such adjudication SBI had filed its **Written Statement**, at **page 133** to the writ petition. SBI had also filed its **Written Submissions** at **page 135** to the writ petition. Both these documents submitted by SBI show that, other than the respondent no.3 another opponent was also there and in course of submissions before this Court Mr. Ratul Das, learned counsel appearing for the respondent no.3 submits that, SBI was impleaded in the proceeding and was made the other opponent. However, such submission is denied and disputed by Mr. Soumya Majumdar, learned counsel appearing for the writ petitioners.

Submissions:

7. Referring to the finding from the impugned order Mr. Majumdar submits that, the entire liability for making payment to those individuals who were appointed by the respondent no.3 to provide

services under those two agreements has been foisted upon SBI. The finding from the said impugned order is quoted below :

“10. The authority opines that while workers may be performing many other duties but the Core Nature of their job remains providing Security and Surveillance of the ATM booths. Sweeping and Clearing are just the peripheral part of their duties. Security job is a scheduled employment under “Watch and Ward without arms” category in the minimum wages notification of the Ministry of Labour and Employment date 19.01.2017. Besides, the Minimum Wages Act, 1948 being a social legislation, whatever benefits most to the workers must be awarded. The Authority therefore, concludes that there was less payment of wages to the 69(sixty nine) security personnel deployed by M/s. SISPL at SBI ATM booths and the responsibility of this default lies solely with the Principal Employer – The State Bank Of India. The logic of deploying a caretaker 24x7 in three shifts at the ATM booths without having the site unattended at any point of time and making payment at the rate of sweeping and cleaning is unsound and malicious in intend. The workers employed by M/s SISPL have been deprived of their legitimate minimum wages as per the rate of “Watch & Ward without arms”. The agreement signed between the Principal Employer and Contractor incorporating the designation as “Care Taker” and paying minimum wages for the category of “Sweeping and Cleaning” is not justifiable in the eyes of law.

*11. Accordingly, SBI (herein Opponent-2) is directed to pay the difference of wages as filed by the Labour Enforcement Officer (C), Asansol amounting to **Rs.44,23,548/-** (Forty four lakhs twenty three thousand five hundred and forty eight only) to the 69(sixty nine) contract workers. Since, the poor workers were deprived of their legitimate dues causing hardship and financial constrain, SBI is also directed to pay compensation to the tune of one time of the principal amount which amounts to **Rs.44,23,548/-** (Forty four lakhs twenty three thousand five hundred and forty eight only). The entire amount of **Rs. 88,47,096/- (Eighty eight lakhs forty seven thousand and ninety six only)** which is inclusive of principal and compensation amount is to be paid by SBI to all the 69(sixty nine) workers. The case was filed on 17.07.2020 and accordingly, hearing in the matter started from 10/12/2020. Scheduled date and time for hearing were fixed on thirty one occasions but the Contractor (Opponent-1) remained absent on twenty three occasions as a result of which the matter was pending and the poor workers become the sufferer. Hence, Opponent-1, M/s Singh Intelligence Services Pvt. Ltd. is directed to pay a compensation of twenty five percent of the principal amount which amounts to **Rs.11,05,887/- (Eleven lakhs five thousand eight hundred and eighty***

seven only) to the 69(sixty nine) workers. The Principal Employer and the Contractor are directed to deposit the said amount within 60(sixty) days to this Authority, by way of A/C Payee Demand Draft in favour of the “Regional Labour Commissioner (Central), Asansol” payable at Asansol for disbursement of the same to the concerned workers through the Applicant.

If the responsibility of the Applicant to ensure that the awarded amount is paid to the correct persons. In case the Opponent fails to deposit the said amount within the prescribed time limit, the Applicant is required to intimate this office and take necessary legal action as per Section 20(5)(b) of the Minimum Wages Act, 1948 to secure the awarded amount from the Opponent.”

8. Mr. Majumdar, learned counsel for the petitioners submits that, before foisting upon any liability, SBI should have been granted proper opportunity of hearing with an adequate opportunity for witness action.
9. Referring to **Sub-Section (7)** to **Section 20** of the Minimum Wages Act learned counsel appearing for the petitioners submits that, every authority appointed under **Sub-Section (1)** to **Section 20** shall have all the powers of a civil court under the **Code of Civil Procedure, 1908** for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents. Every such authority shall be deemed to be a civil court for all the purposes under **Section 195** of the **Code of Criminal Procedure**.
10. Mr. Majumdar further submits that, after the said supplementary agreement was executed, the respondent no.3 went on raising its bills **only on account of cleaning and swiping services**. Therefore, the respondent no.3 has also proceeded and understood the scope of their

work only to the extent of providing cleaning and swiping services. The impugned order shows that, while proceeding with the adjudication, the respondent no.2 had, *inter alia*, observed as follows :

“.....But, the SBI management remained silent when the monthly bills were produced before them because of which the workers were not paid their minimum wages as per Central Government rates. The Applicant requested for justice for the poor and deprived workers.”

11. Mr. Majumdar further submits that, SBI has also not disclosed those bills through this writ petition but the same are in existence and the petitioners can produce the same before the adjudicating authority if a proper witness action is conducted before it. Learned counsel further submits that, in absence of a proper opportunity of cross-examination being granted to SBI, it was not in a position to prove its case that, it had no liability towards the individuals employed by the respondent no.3 to provide cleaning and swiping services under the said two agreements to SBI.
12. Mr. Majumdar further submits that, the nature of duty performed by the individuals appointed by the respondent no.3 for caretaking services, if disputed by the complainant, is essentially a triable issue and is required to be adjudicated on proper evidence action.
13. In the light of the above, Mr. Majumdar submits that, the impugned order suffers from serious infirmity and should be set aside.

14. Mr. Ratul Das, learned counsel appearing for the respondent no.3 has opposed the writ petition tooth and nail. He submits that, when the supplementary agreement was executed it was at the insistence of the SBI only. In support, he has referred to the following portion from the supplementary agreement.

“C. Pursuant to the acceptance of the offer, the parties hereto had entered into an Agreement dated 7th day of March, Two Thousand and Sixteen, hereinafter called the ‘Principal Agreement’, recording the terms and conditions of the caretaker services to be provided for the consideration mentioned therein which was the wages payable strictly under the Minimum Wages Act and the Central Government notification issued thereunder. The main job of the Contractor was to keep the ATM premises clean and tidy and therefore, the wages payable would fall under the category of unskilled “Sweeping and Cleaning”.

D. During the pendency of the said Principal Agreement, it was discovered that the wages payable under the Agreement was recorded as per the Classification of Watch and Ward resulting in payment of excess wages which was not the intention of the Bank. Such payments were subject to severe audit objection, leakage of income of the Bank and drain of public money as well as unjust enrichment for the Contractor. The wrong fixation of consideration was regarded as misrepresentation on the part of the Contractor by the Bank whereas it was termed as mutual mistake by the Contractor which in any case rendered the agreement void and non est.

E. Such fundamental error in fixation of consideration leading to the contract becoming void has affected the immediate livelihoods of the employees of the Contractor deployed at the Bank premises in terms of the impugned agreement and therefore, to grant succour to such workforce of the Contractor, the Bank offered to continue with the arrangement till the remaining period of the impugned Principal Agreement by execution of the instant agreement removing and correcting the anomaly in the

fixation of the consideration and/or the wages as per the Classification of Service in terms of the Minimum Wages Act pertaining to sweeping and cleaning.

F. In consideration of the above and the consideration more fully mentioned hereunder written (as may be applicable on the actual place of deployment or providing of service), the parties are desirous of entering into a supplementary agreement being these presents amending and verifying the various terms and conditions of the Principal Agreement as hereinafter appearing.”

15. Mr. Das, then submits that, the written statements and written submissions filed by SBI were on record before the respondent no.2 and upon due consideration thereof the order was passed. At no point of time in course of the adjudication, SBI raised any objection with regard to any triable issue being involved. On a plain reading of the written objection and the written statements filed by SBI it would be clear that, the respondent no.3 was engaged by SBI not only to provide for cleaning and swiping services but also to provide several other services which, *inter alia*, include the security services. Therefore, SBI now cannot contend anything to the contrary.

16. In fact, the said two agreements would also show that, the services that was provided by the respondent no.3 all along was more than cleaning and swiping services and the same included security services at ATM centers of SBI. Initially under the parent agreement the respondent no.3 was appointed to provide **Comprehensive Caretaker Services** which included the security services.

17. From a meaningful reading of the impugned order it would be clear that, after taking into consideration of all these aspects the order was passed by the respondent no.2, which is otherwise well reasoned and well versed. There is no perversity on the face of the impugned order.
18. Mr. Ratul Das, learned counsel further submits that, even if the witness action has not taken place, the records show that, it was not required as SBI has admitted its liability with regard to the quantum of difference of wages payable to those individuals and on the basis of such admission the order was passed by the respondent no.2.
19. Mr. Das, accordingly prays for dismissal of the writ petition.

Decision :

20. After considering the rival contentions of the parties and upon perusal of the materials on record, this Court thinks it fit to reiterate the settled law at the outset. It is the elementary that, when a liability is fixed on a party in a proceeding or even not a party to a proceeding, a meaningful and proper opportunity of hearing is a mandatory requirement to such a party to defend the claims against it.
21. In the facts of the instant case, the Labour Enforcement Officer has initiated the complaint. The admitted positions are that, the parent agreement and the supplementary agreement, as referred to above, were executed by SBI and the respondent no.3. The bills, though not part of the writ petition raised by the respondent no.3 upon the SBI,

were for cleaning and swiping services during the relevant period of time, as submitted on behalf of the petitioner. It is true that, those bills were not produced before the adjudicating authority neither before this Court. These are the inter-party documents between SBI and the respondent no.3. The moment a liability is fixed upon SBI and the bank contends that, those bills raised by the respondent no.3 were only for cleaning and swiping services, this Court is of the view that, an opportunity should be granted to both the parties, i.e. SBI and the respondent no.3, to deal with those bills after the same are produced before the adjudicating authority.

22. If those bills and other related documents are allowed to be brought on record and a detailed appreciation of evidence takes place, the same might totally alter and change the complexion of the finding in the impugned order.

23. Inasmuch as, **Sub-Section (7)** to **Section 20** of the **Minimum Wages Act** provides for an authority to the respondent no.2 to call for production of relevant documents and for taking evidence thereupon if necessary as a civil Court.

24. Inasmuch as, to arrive at a conclusive finding with regard to the actual services provided by the respondent no.3 and the individuals employed by it, to the bank, the said two agreements are also required to be

examined in the light of the existence of actual facts and documents, which is also a matter of evidence.

25. For the foregoing reasons and discussions, this Court is of the firm view that, the respondent no.2 ought to have conducted a proper evidence action to arrive at a conclusive finding considering the nature of facts and circumstance involved in this case and the same not being done by the respondent no.2, the decision making process, while passing the said impugned order dated **September 6, 2024**, suffered from serious infirmity. The respondent no.2 has failed to exercise its discretion and jurisdiction under the statute. The said impugned order, in the considered view of this Court, cannot sustain in law.
26. Hence the impugned order dated **September 6, 2024, Annexure-P11 at page 140** to the writ petition stands **set aside** and **quashed**.
27. SBI and the respondent no.3 shall be at liberty to disclose, if any, further documents/evidence they want to disclose before the respondent no.2 positively within a period of **four weeks** from date upon serving copies to each other.
28. After completion of such disclosure, the parties shall give notice to the respondent no.2, who then shall commence the hearing and conclude the same on the basis of the existing records and also on the basis of the documents and evidence to be disclosed by the parties as directed herein by conducting a proper witness action and pass its reasoned

decision in accordance with law positively within a period of ***four months*** from the date of commencement of the hearing.

29. Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

30. It is made clear that, this Court has not gone into the merits of the rival contentions of the parties and the respondent no.2 while adjudicating the issue shall proceed independently in accordance with law and without being influenced by any observation made by this Court.

31. With the above observations and directions this writ petition, ***WPA 25880 of 2024*** stands ***allowed***, without any order as to costs.

32. Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)