

(2024) 06 KL CK 0080

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 15178 & 26288 Of 2013 & 859 Of 2014

Abdul Khader

APPELLANT

Vs

Assistant Labour Officer

RESPONDENT

Date of Decision : 20-06-2024

Acts Referred:

Minimum Wages Act, 1948 — Section 19, 20(2), 20(3), 20(3)(i), 20(3)(ii), 20(5), 20(5)(b), 21
Limitation Act, 1963 — Section 5
General Clauses Act, 1897 — Section 25
Kerala Minimum Wages Rules, 1958 — Rule 33, 33(1), 33(2), 33(3), 33(4)

Citation : (2024) 06 KL CK 0080

Hon'ble Judges : Murali Purushothaman, J

Bench : Single Bench

Advocate : M.M.Fathima Jaleena, K.A.Hazan, V.J.James, Ramesh Kumar K., M.M.Abbas Ali, Justin Jacob

Final Decision : Dismissed

Judgement

Murali Purushothaman, J

1. Since common issues arise for consideration in these writ petitions, they are disposed of by this common judgment. For the sake of convenience, unless otherwise expressly indicated, the status of the parties and the exhibits referred to hereinbelow shall be as obtaining in W.P.(C) 15178 of 2013.

2. W.P.(C) 15178 of 2013: The petitioner is the proprietor of Al-Iqbal Hospital, Chentrappinni, which was established in 1996. Petitioner is a businessman in gulf countries and the Administrator looks after the affairs of the hospital in his absence. The hospital has six consulting doctors and a Resident Medical Officer, along with 20 permanent employees across various departments. Additionally, there were 45 trainee nursing students who were undergoing mandatory one-year training as part of their studies and most of them leaving the hospital after completing their training. The petitioner ensured that all the employees were

enrolled in the Employees Provident Fund.

3. While so, the petitioner received Ext. P1 revenue recovery notice issued by the Deputy Tahsildar (Revenue Recovery), the 3rd respondent for the recovery of an amount of Rs. 20,17,680/-together with interest @ 12% per annum from 28.01.2008 due towards arrears of wages ordered in MWA 10/2006 by the 2nd respondent, the Deputy Labour Commissioner, Thrissur, the Authority under the Minimum Wages Act, 1948 (hereinafter called the "MW Act' for short). The petitioner states that he was not aware of any proceedings before the 2nd respondent nor he received any notice from the 2nd respondent. On enquiry, the petitioner came to know that the 2nd respondent passed an ex parte order on 28.01.2008 on a claim filed by the Assistant Labour Officer, the 1st respondent, the Inspector appointed under Section 19 of the MW Act for payment of difference in minimum wages to 87 employees for the period from September, 2005 to February, 2006. The petitioner was directed to pay a sum of Rs. 10,08,840/- being the difference in minimum wages together with compensation of Rs. 10,08,840/- to the employees concerned.

4. On coming to know about the ex parte order in MWA 10/06, the petitioner filed Ext. P2 application to set aside the order with Ext. P3 application to condone delay of 1696 days. The petitioner also approached this Court by filing W.P. (C) No. 414 of 2013 and this Court, by Ext. P5 judgment, directed the second respondent to consider Exts. P2 and P3 applications in accordance with law within a period of two months from the date of receipt of a copy of the judgment. This Court also ordered that the revenue recovery proceedings initiated pursuant to Ext. P1 shall be put on hold if a sum of Rs.5,00,000/- is remitted with the Assistant Labour Officer.

5. The 2nd respondent, by Ext. P6 order, dismissed Exts. P2 and P3 applications on the grounds that the petitioner failed to establish that there was sufficient cause for not filing the petition to set aside ex parte order within the time stipulated under the provisions of the Kerala Minimum Wages Rules, 1958 (Kerala MW Rules), and that the Rules do not empower the authority to condone the delay in filing a petition, which is filed 1743 days beyond the time stipulated in the Rules.

6. Ext. P6 order is impugned in this writ petition. It is contended that the Authority under the MW Act did not provide an opportunity of being heard to the petitioner before passing an order in the application filed under Section 20(2) of the MW Act. The petitioner states that he did not receive any notice from the 2nd respondent in person. He intermittently goes to gulf countries in connection with his business and in his absence, the Administrator is looking after the affairs of the hospital. It is further contended that the 2nd respondent went wrong in taking the trainee nursing students as employees of the petitioner. It is also contended that if sufficient cause is shown, the 2nd respondent can set aside the ex parte order even after the expiry of the period of 30 days under Rule 33(4) of the Kerala MW Rules, under Section 5 of the Indian Limitation Act, 1963.

Accordingly, the petitioner has sought for quashing Ext. P6 order and to allow Exts. P2 and P3 applications.

7. A counter affidavit is filed by the 2nd respondent wherein the copy of the ex parte order is produced as Ext. R2(a). In Ext. R2(a), it is stated that on receipt of the application from the 1st respondent under Section 20(2) of the MW Act, notices were sent to opposite party for appearance and filing written statement. The opposite party did not enter appearance or filed any written statement though he received the notice in time. Hence, he was declared ex parte and the case was posted for evidence. Assistant Labour Officer was examined as AWI and Exts. A1 to A5 documents were marked. After considering the materials on record, Ext. R2(a) order dated 28.01.2008 was passed directing the petitioner to pay a sum of Rs. 10,08,840/- as arrears of wages for the period from September, 2005 to February, 2006 to the 87 employees named therein, along with a one time compensation of Rs. 10,08,840/-, failing which revenue recovery proceedings will be initiated with 12% interest from the date of order. The petitioner was also directed to pay the minimum rate of wages to the employees in future. It is stated in the counter affidavit that Ext. R2(a) was passed on 28.01.2008 and Exts. P2 and P3 applications were filed after 4 years and 9 months and that too, after revenue recovery notice was served on the petitioner. The petitioner has not shown sufficient reason for setting aside the ex parte order. It is stated that in view of the express provision contained in Rule 33(4) of the Kerala MW Rules, no application for setting aside an ex parte order shall be entertained after one month of the date of the order. It is also stated that the petitioner is persistently violating labour laws and four cases have been registered against him during the year 2008 (ST. Case Nos.2299/08, 2302/08, 2303/08 and 2304/08) in which he has been convicted. Four cases were filed against the petitioner under various laws during the year 2012 and that he was convicted in one case filed under MW Act. Accordingly, it is contended that there is no bona fides on the part of the petitioner and the reasons projected by him for not presenting his version before the competent authority at the appropriate time are of no acceptable value.

8. W.P (C) No. 26288 of 2013 is filed by Thrissur District Private Hospital and Pharmacy Workers Union, which claims that all the employees of Al-Iqbal Hospital, Chentrappinni are its members, for enforcement of Ext. R2(a) order by resorting to revenue recovery proceedings. A counter affidavit is filed by the 3rd respondent (petitioner in W.P.(C) 15178 of 2013) contending, inter alia, that no revenue recovery proceedings can be initiated to recover any amount awarded under Section 20(3) of the MW Act.

9. W.P (C) No. 859 of 2014 is filed by the petitioner in W.P.(C) 15178 of 2013 challenging Ext. P11 revenue recovery proceedings initiated against him pursuant to Ext. R2(a). For the first time, a challenge has been made to Ext. R2(a) order dated 28.01.2008, producing the said order as Ext. P5 in this writ petition. Several contentions have been raised to impugn Ext. R2(a), which were not

raised in W.P.(C) 15178 of 2013. It is contended that the Deputy Labour Commissioner, who passed Ext. R2(a) order, had previously conducted an inspection at the petitioner's hospital and issued show cause notice (produced as Ext. P3 in this writ petition) for violation of the provisions of the MW Act, while serving as the District Labour Officer (ENF). It is based on this inspection and notice that the Assistant Labour Officer filed the application under Section 20(2) of the MW Act. It is contended that Ext. R2(a) order passed by the 2nd respondent who initiated the proceedings is violative of the doctrine of "no man can be a Judge in his own cause". It is also contended that no revenue recovery proceedings can be initiated to recover any amount awarded under Section 20(3) of the MW Act, since Section 20(5) of the MW Act provides that an order under Section 20(3) can be executed only by a Magistrate or the Magistrate to whom the Authority makes a reference. It is further contended that the MW Act does not provide for awarding interest @ 12% on the amount awarded under Section 20(3). Ext. R2(a) order is also challenged on factual merits.

10. A counter affidavit has been filed by the 2nd respondent, the Assistant Labour Officer and the 4th respondent employees union resisting the averments in the writ petition.

11. Heard the learned counsel on both sides.

12. The case of the petitioner is that he did not receive any notice from the 2nd respondent, the Authority under the MW Act in the claim petition filed by the 1st respondent Inspector under Section 20(2) in person, as he intermittently goes to gulf countries in connection with his business and in his absence, the Administrator is looking after the affairs of the hospital and Ext. R2(a) was passed without affording an opportunity of hearing to the petitioner. Section 20(3) (i) & (ii) of the MW Act reads as under:-

"20(3). When any application under sub-section (2) is entertained the Authority shall hear the applicant and the employer, or give them an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under this Act, direct-

(i) in the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess;

(ii) in any other case, the payment of the amount due to the employee, together with the payment of such compensation as the Authority may think fit, not exceeding ten rupees;

And the Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the

disposal of the application.”

Section 20(3) of the MW Act provides that, when any application under sub-section (2) is entertained and before direction is issued under Section 20(3)(i) & (ii), the Authority shall hear the applicant and the employer, or give them an opportunity of being heard. The petitioner was served with notice by the 2nd respondent. Chapter V of the Kerala MW Rules deals with claims under the MW Act and Rule 33 of the Kerala MW Rules reads as under:

“Rule 33. Appearance of parties.

(1) If an application under sub-section (2) of Section 20 or Section 21 is entertained, the Authority shall serve upon the employer by registered post a notice in Form X to appear before him on a specified date with all relevant documents and witnesses, if any, and shall inform the applicant of the date so specified.

(2) If the employer or his representative fails to appear on the specified date, the Authority may hear and determine the application ex parte.

(3) If the applicant or his representative fails to appear on the specified date, the Authority may dismiss the application.

(4) An order passed under sub-rule (2) or sub-rule (3) may be set aside on sufficient cause being shown by the defaulting party within one month of the date of the said order, and the application shall then be reheard after service of notice on the opposite party on the date fixed for rehearing in the manner specified in sub rule (1).”

Rule 33(1) provides that, if an application under Section 20(2) or Section 21 is entertained, the Authority shall serve upon the employer by registered post a notice in the prescribed form to appear before him on a specified date with all relevant documents and witnesses, if any, and shall inform the applicant of the date so specified. Rule 33(2) provides that, if the employer or his representative fails to appear on the specified date, the Authority may hear and determine the application ex parte. The petitioner has no case that the 2nd respondent did not issue any notice on the application under Section 20(2). The case of the petitioner is that, he did not receive any notice from the 2nd respondent in person, as he intermittently goes to gulf countries in connection with his business and in his absence, the Administrator is looking after the affairs of the hospital. When notice has been issued and served on the employer, and the employer failed to appear, the only option before the Authority is to hear and determine the application ex parte. The petitioner cannot be heard to contend that he was not given opportunity of hearing and there is violation of principles of natural justice.

13. As regards Ext. P6 order dismissing Ext. P2 application for setting aside Ext. R2(a) ex parte order, the said application was filed along with Ext. P3 application to condone delay. There was a delay 4 years and 9 months. The reason stated in

Ext. P2 application for setting aside the ex parte order and Ext. P3 application to condone delay is that the petitioner is a non resident Indian having business at gulf countries and most of the time in a year, he will be abroad in connection with the business there and the notice in the proceedings before the 2nd respondent was not properly served on him and he came to know of the order when he received notice intimating execution proceedings. Rule 33(4) of the Kerala MW Rules provides that an order passed under sub-rule (2) or sub-rule (3) may be set aside on sufficient cause being shown by the defaulting party within one month of the date of the said order, and the application shall then be reheard after service of notice on the opposite party on the date fixed for rehearing in the manner specified in sub rule (1). The 2nd respondent found that the Kerala MW Rules does not empower the authority to condone the delay in filing Ext. P2 petition, which is filed beyond one month of the date of the ex parte order and the petitioner has failed to show sufficient cause for not filing the petition within the time stipulated. Rule 33(4) of the Kerala MW Rules permits the Authority under the MW Act to set aside an ex parte order passed under sub-rule (2) on sufficient cause being shown by the defaulting party within one month of the date of the said order. The period up to which the Authority can accept an application for setting aside the ex parte order is statutorily fixed. Beyond the said period, the Authority has no power to set aside an ex parte order passed under Rule 33(2), even on sufficient cause being shown by the defaulting party. If the delay is statutorily not condonable, it cannot be condoned extending the provisions of Section 5 of the Limitation Act. Further, no sufficient cause has been shown by the petitioner to have the ex parte order set aside. When notice was issued and served on the petitioner, he cannot contend that the notice was not properly served on him for the reason that most of the time in a year he will be abroad in connection with his business. I do not find any reason to interfere with Ext. P6 order passed by the 2nd respondent.

14. In W.P (C) No. 859 of 2014, the petitioner has come up with two new contentions to challenge Ext. R2(a) ex parte order. One is, the Deputy Labour Commissioner who passed Ext. R2(a) order had previously conducted an inspection at the petitioner's hospital and issued show cause notice for violation of the provisions of the MW Act, while serving as the District Labour Officer (ENF). It is based on this inspection and notice that the Assistant Labour Officer filed the application under Section 20(2) of the MW Act. It is thus contended that Ext. R2(a) order passed by the 2nd respondent who initiated the proceedings is violative of the doctrine of "no man can be a Judge in his own cause". It is further contended that the MW Act does not provide for awarding interest @ 12% on the amount awarded under Section 20(3).

15. After Ext. R2(a) order dated 28.01.2008, the petitioner initially filed W.P. (C) No. 6419 of 2011 which was disposed of by judgment dated 22.08.2012. The relevant portion of the judgment reads as follows:

"The petitioner has approached this Court with the following prayers:

"i. Call for the records leading to Ext. P1 and issue a writ in the nature of certiorari and quash Ext. P1.

ii. Declare that Ext. P1 proceedings as an invalid one since it is issued without notice to the petitioner.

iii. Grant one months time to the petitioner to challenge the order in WWA 10/2006 of the 2nd respondent mentioned in Ext. P1 till such time stay all further proceedings pursuant to Ext. P1.

iv. issue such other orders, writ or direction as deems fit by this Hon'ble Court.

2. Obviously, the contention of the petitioner is that the petitioner was never aware of the proceedings taken pursuant to MWA 10 of 2006 and it was in the said circumstances that the writ petition was filed, seeking for one month's time so as to challenge the order passed in the MWA. After considering the said relief raised in the writ petition, further proceedings pursuant to Ext. P1 were directed to be kept in abeyance as per the interim order dated 01.03.2011, which was subsequently extended on 18.03.2011 by 'one month'. Virtually, the relief already granted is more than that was sought for and the interim stay expired more than one year ago.

In the said circumstances, this Court does not find any reason to call for interference. Interference is declined and the writ petition is dismissed."

It is thereafter that the petitioner has filed W.P. (C) No. 414 of 2023 leading to Ext. P5 judgment directing the second respondent to consider Exts. P2 and P3 applications. The 2nd respondent dismissed Exts. P2 and P3 applications by Ext. P6 order. Ext. P6 order is challenged in W.P.(C) 15178 of 2013. There is no challenge to Ext. R2(a) in W.P.(C) 15178 of 2013. Ext. R2(a) dated 28.01.2008 is challenged for the first time after an inexplicable delay of 6 years, in W.P (C) No. 859 of 2014, wherein the petitioner has raised the contention regarding the violation of the doctrine of "no man can be a Judge in his own cause". Though it is admitted in the writ petition that Ext. R2(a) could not be challenged earlier, no reason whatsoever is stated for the belated challenge. In the application filed under Section 20 (2), notice was issued and served on the petitioner, but he failed to appear and the Authority determined the application ex parte. Had the petitioner appeared before the Authority, he could have raised this objection before the Authority itself. Admittedly, the application under Section 20(2) is not filed by the 2nd respondent. The case of the petitioner is that all the proceedings after the inspection, except the filing of claim petition, had been done by the 2nd respondent while he was officiating as the District Labour Officer (ENF). Though it is stated that the said officer has been arrayed as a witness, the Appendix to Ext. R2(a) does not refer to the name of the 2nd respondent as a witness. There is no pleading that Ext. R2(a) suffers from the vice of unfairness or bias. Since the petitioner had not raised the violation of the doctrine of "no man can be a Judge in his own cause" earlier even before this Court, I do not consider it necessary to grant relief to the petitioner on this ground. There is culpable delay

and laches on the part of the petitioner in challenging Ext. R2(a). The subsequent writ petition (W.P (C) No. 859 of 2014), in respect of the same subject matter with new ground can be viewed only as an attempt to rekindle the lapsed cause of action. Further, the rule that no body can be the judge of his own cause cannot be said to be an inflexible rule of natural justice and the same can be moulded in the interest of justice. The rule can be modified and even excluded in exceptional cases. In *Union of India v. Tulsiram Patel* [(1985) 3 SCC 398], the Hon'ble Supreme Court held:

"101. Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well defined exceptions to the *nemo judex in causa sua* rule as also to the *audi alteram partem* rule. The *nemo judex in causa sua* rule is subject to the doctrine of necessity and yields to it as pointed out by this Court in *J. Mohapatra and Co. v. State of Orissa* (1984 (4) SCC 103)."

16. Yet another contention raised in W.P (C) No. 859 of 2014 is that no revenue recovery proceedings can be initiated to recover any amount awarded under Section 20(3) of the MW Act, since Section 20(5) provides that an order under Section 20(3) can be executed only by a Magistrate or the Magistrate to whom the Authority makes a reference. The Revenue Divisional Officer is not a Magistrate as provided in Section 20(5)(b) and therefore cannot recover the amount ordered in Ext. R2(a) as if it were a fine. According to the petitioner, Ext. R2(a) cannot be executed through revenue recovery proceedings and it can be executed only through a proceedings before a 'Magistrate' and therefore the entire proceedings leading to Ext. P11 notice (in W.P (C) No. 859 of 2014) under Section 49 or the Kerala Revenue Recovery Act, 1968 are illegal. Of course, challenge to Ext. P11 is a fresh cause of action.

17. Section 20(5) of the MW Act reads as under:-

"20(5). Any amount directed to be paid under this section may be recovered-

(a) if the Authority is a Magistrate, by the Authority as if it were a fine imposed by the Authority as a Magistrate, or

(b) if the Authority is not a Magistrate, by any Magistrate to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate."

(underlining supplied)

Though the amount directed to be paid under Section 20 of the MW Act is not really a fine, sub-section (5) thereof provides that the recovery of such amount may be made, as if it were a fine imposed by the Magistrate. The amount, a non fine, will be deemed to be a fine for the purpose of recovery. No other mode of recovery is provided under the MW Act (as it then stood) for recovery of amount directed to be paid under Section 20. Therefore, it is necessary to resort to the provisions of the General Clauses Act, 1897 (Central Act 10 of 1897) which deals with recovery of fines. Section 25 of the General Clauses Act, 1897 reads as

follows:

"25. Recovery of fines.- S.63 to S.70 of the Indian Penal Code (45 of 1860) and the provisions of the Code of Criminal Procedure (5 of 1898) for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye law unless the Act, Regulation, rule, or bye law contains an express provision to the contrary."

(underlining supplied)

Under the authority of Section 25 of the General Clauses Act, 1897, the provisions of the Code of Criminal Procedure, 1973 relating to the issue and the execution of warrants for the levy of fines are made applicable to all fines imposed under any Act, unless such Act contains an express provision to the contrary. The Hon'ble Supreme Court in *Shantilal v. State of M.P.* [2007 (11) SCC 243: 2008 (1) KLT 503: 2007 (4) KHC 580] has categorically observed that Section 25 of the General Clauses Act, 1897 makes it explicitly clear that the provisions of the Code of Criminal Procedure, 1973 relating to payment of fine would apply to all cases wherein fines have been imposed, unless the Act, Regulation, Rule or Bye law contains an express provision to the contrary. The Hon'ble Supreme Court held as under:

"26. Though S.25 of the General Clauses Act, 1897 was not referred to in *Bashiruddin Ashraf*, in our opinion, bare reading of the said provision also makes it explicitly clear and leaves no room for doubt that S.63 to S.70, IPC and the provisions of CrPC relating to award of imprisonment in default of payment of fine would apply to all cases wherein fines have been imposed on an offender unless 'the Act, Regulation, rule or Bye law contains an express provision to the contrary'. We are, therefore, unable to uphold the bald contention of the appellant that in absence of specific provision to order imprisonment in default of payment of fine in a statute, a Court of law has no power to order imprisonment of an offender who fails to pay fine and such action would be illegal or without authority of law. In our judgment, in absence of a provision to the contrary, viz. that no order of imprisonment can be passed in default of payment of fine, such power is explicit and can always be exercised by a Court subject to the relevant provisions of IPC and CrPC."

Therefore, going by the mandate of Section 25 of the General Clauses Act, 1897, the provisions of the Code of Criminal Procedure, 1973 relating to the issue and the execution of warrants for the levy of fines can be resorted for recovery of the amount directed to be paid under Section 20(3) of the MW Act.

18. Sections 421 and 431 of the Code of Criminal Procedure, 1973 read as under:

"421. Warrant for levy of fine.-

(1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the

following ways, that is to say, it may-

- (a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;
- (b) issue a warrant to the collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under Section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender."

431: Money ordered to be paid recoverable as a fine.-Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine:

Provided that Section 421 shall, in its application to an order under Section 359, by virtue of this section, be construed as if in the proviso to sub-section (1) of Section 421, after the words and figures "under Section 357", the words and figures "or an order for payment of costs under Section 359" had been inserted."

(underlining supplied)

Section 421 of the Code of Criminal Procedure, 1973 deals with warrant and levy of fine. Fine can be recovered either by issue of a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender or by issue of warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both of the defaulter. On receipt of warrant under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law. The Kerala Revenue Recovery Act, 1968 has

been enacted for the recovery of arrears of public revenue in the State and public revenue due on land has been defined under Section 2(j) of the Kerala Revenue Recovery Act to mean the land revenue charge on the land. Therefore, the amount directed to be paid under Section 20 of the MW Act can be recovered by the Magistrate in the manner provided under Section 421 of the Code of Criminal Procedure, on an application from the Authority, as if it were a fine imposed by such Magistrate. The Magistrate has to authorize the Collector to realise the amount in accordance with the provisions of the Kerala Revenue Recovery Act. Section 3(4)(b) of the Code of Criminal Procedure, 1973 reads as under:

"Section 3(4).Where, under any law, other than this Code, the functions exercisable by a Magistrate relate to matters-

(a) xxxxxxxxxxxx

(b) which are administrative or executive in nature, such as, the granting of a licence, the suspension or cancellation of a licence, sanctioning a prosecution or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate."

The function exercisable in the matter, such as, recovery by the Magistrate, is administrative or executive. Therefore, the Executive Magistrates have jurisdiction to recover fine. Section 20 of the Code of Criminal Procedure deals with the appointment of Executive Magistrates. The Revenue Divisional Officer is an Executive Magistrate appointed under Section 20. The Revenue Divisional Officer also exercises the powers and functions of the 'Collector' under Section 2(c) of the Revenue Recovery Act, and referred to in Section 421 of the Code of Criminal Procedure. Therefore, on an application from the Authority under the MW Act, the Revenue Divisional Officer, the Magistrate, can recover the amount directed to be paid under Section 20(3) of the MW Act. Therefore, the challenge against Ext. P11 notice issued under the Kerala Revenue Recovery Act also fails. Here, it is to be noted that, by the Minimum Wages (Kerala Amendment) Act, 2017, Section 20(5)(b) has been substituted and Section 20(5)(b) now reads as under:

"Section 20(5)(b). if the Authority is not a Magistrate, by the Authority, as if it were arrears of revenue due on land, without prejudice to any other mode of recovery."

19. The last contention of the petitioner is that MW Act does not provide for awarding interest @ 12% on the amount awarded under Section 20(3) of the MW Act. What the 2nd respondent has ordered in Ext. R2(a) is as follows:

"if the opposite party fails to follow this order revenue recovery proceedings will be initiated on a report on the same from the Assistant Labour Officer with 12% interest from date of order."

In Ext. R2(a), the 2nd respondent has, in addition to the deferential amount between the minimum wages and actual wages, ordered only payment of

compensation and not interest on the amount awarded under Section 20(3). However, Section 6 of the Revenue Recovery Act provides that arrears of public revenue due on land shall bear interest at the rate of 12% per annum. Therefore, in the light of the said provision, there is nothing wrong in recovering the amount covered by Ext. R2(a) by revenue recovery proceedings with 12% interest.

20. In view of the above discussion, I find that the writ petitions lack merit and they are accordingly dismissed.

The Minimum Wages Act, 1948 is a welfare legislation. The object of the Act is to fix the minimum rate of wages for various types of employment mentioned in Part I and II of the Schedule to the Act. The petitioner has been persistently violating the provisions of the MW Act and has been convicted at least five times for violation of the provisions of the Act. The petitioner has been attempting to delay the payment of amounts due under the MW Act by all means. The observation of this Court in the judgment in W.P. (C) No. 6419 of 2011 extracted in the earlier part of this judgment is also relevant to be noted in this context. The petitioner shall remit the amount covered by Ext. P11 (in W.P (C) No. 859 of 2014) with interest at the rate mentioned therein till the date of payment, after deducting the amount paid pursuant to the direction in Ext. P5 judgment, before the 1st respondent, the Assistant Labour Officer within two months from the date of receipt of a copy of this judgment, or else, it will be open to the respondents to take steps to recover the amount as per the provisions of the MW Act as amended by the Minimum Wages (Kerala Amendment) Act, 2017.