

(1998) 03 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No. 23095 of 1997 connected with Writ Petition No. 23096 of 1997

Airfreight Limited, Bangalore

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 30-03-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Minimum Wages Act, 1948 — Section 20 (2), 20 (3), 27, 3, 5

Citation : (1999) 82 FLR 231 : (1998) ILR (Kar) 2826 : (1998) 5 KarLJ 300

Hon'ble Judges : G. Patri Basavana Goud, J

Bench : Single Bench

Advocate : Sri R. Gururajan, for the Appellant; Sri K.H. Jagadish, High Court Government Pleader and Sri K.S. Subramanya, for the Respondent

Judgement

1. Respondents 3 to 5 in W.P. No. 23095 of 1997 and respondents 3 to 18 in W.P. No. 23096 of 1997 are the employees of the Airfreight Limited petitioner in both these writ petitions. According to the said employees, they are required to be paid minimum wages and Variable Dearness Allowance (VDA) in accordance with the notification issued by the first respondent State Government on 19-8-1987 at Annexure-D u/s 3 read with Section 5 of the Minimum Wages Act, 1948 ("Act" for short). Their main grievance was with regard to non-payment of VDA by their employer. They, therefore, filed applications u/s 20(2) of the Act, seeking directions to pay difference of minimum wages. By the orders at Annexure-L in each of the writ petitions, the employees are held entitled to difference of minimum wages to the extent of Rs. 8,740/- each, by way of VDA, in terms of the above said order at Annexure-D. In addition, the second respondent authority has also directed compensation payable u/s 20(3) of the Act, to the extent of twice the above said amount. In these writ petitions under Article 226 of the Constitution, petitioner-employer seeks a writ in the nature of declaration that the Notification at Annexure-D is not applicable to the petitioner which is a courier industry, and, further seeks quashing of the orders at Annexure-L.

2. Petitioner is a courier service. It has its registered office at Bombay, being a company incorporated under the Companies Act, 1956. It has its branch at Bangalore. The main activity of cargo division is that of handling incoming and outgoing shipments by air with regard to clearing and forwarding. It includes delivery at the destinations. It also includes domestic door-to-door express delivery of documents, parcels and packages. The essential activity of the petitioner is clearing and forwarding the goods entrusted to it for safe delivery by way of personal service. This is as averred in the writ petitions itself.

3. In exercise of its power u/s 27 of the Act, first respondent State Government, by its Notification dated 27/28-1-1971, has added "Employment in Shops and Commercial Establishments" as Item No. 28 in Part I of the Schedule to the Act.

4. By Notification dated 19-8-1987 at Annexure-D u/s 3 read with Section 5 of the Act, first respondent State Government has fixed the minimum rates of wages payable to the categories of employees as specified in the said Notification, working in the shops and commercial establishments in the State of Karnataka. The Notification also provides for payment of VDA at the rates specified therein.

5. Section 2(e) of the Act inter alia defines "employer" as meaning any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which, minimum rates of wages have been fixed.

Section 3 of the Act inter alia provides that the appropriate Government shall, in the manner provided therein, fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either part by notification u/s 27.

For any claim arising out of payment of less than a minimum rate of wages, an employee may apply under sub-section (2) of Section 20 of the Act, to the authority appointed under sub-section (1) thereof, upon which, after hearing both sides, the authority may direct under sub-section (3), payment of difference of minimum wages, together with such compensation not exceeding 10 times the amount of such excess as the authority may think fit.

6. Extensive evidence has been led before the second respondent authority with regard to the type of work that each of the employees concerned herein is doing. Sri K.S. Subramanya, learned Counsel for the employees, refers to the admission of a witness examined on behalf of the petitioner before the second respondent authority, wherein, the witness admits that the employees are not being paid dearness allowance. Assuming for a moment that the notification at Annexure-D is applicable to the petitioner establishment, Sri R. Gururajan, learned Counsel for the petitioner, submits that none of the employees concerned in these two writ petitions would fall within any of the categories of employees specified in the said Annexure-D. Having regard to the nature of work that the said employees are doing, as brought out in the course of evidence, and in the light of the

residuary clause with regard to categories of workmen in the Notification at Annexure-D, I do not find any perversity in the finding of the second respondent authority, with regard to employees concerned herein being "employees" within the meaning of Section 2(i) of the Act. If so, in the light of the admitted position that dearness allowance is not being paid to the employees of the petitioner establishment, the question that next arises is as to whether, as contended by the petitioner, the Notification at Annexure-D is not applicable at all to the petitioner establishment, and, as such, the impugned orders of the second respondent authority that have proceeded on the basis that the petitioner establishments is a scheduled employment, cannot be legally sustained. I shall deal each of the grounds urged by Sri R. Gururajan, learned Counsel for the petitioner in support of this contention.

7. The nature of business run by the petitioner establishments is referred to earlier in the very words used by the petitioner in the course of averments in the writ petitions. Sri Gururajan submits that the petitioner acts like a post office. He did not go to the extent of submitting that it is in the course of performing a sovereign function. Far from it, what the petitioner establishments is doing is purely a commercial activity with profit motive. Apart from handling incoming and outgoing shipments by air, it also does domestic door-to-door express delivery of documents, parcels and packages. It is in such an establishments that the employees are working. What Item No. 28 of Part I of Schedule to the Act refers to is "employment in shops and commercial establishments". "Commercial Establishment" is not defined in the Act. It is also not defined in the General Clauses Act, 1897. It would not be permissible to import, for the purpose of the Act, the definition of "commercial establishments" from any other enactments. Going by ordinary meaning, therefore, nothing more is required to construe the petitioner establishment as a commercial establishment. According to the Chambers 20th Century Dictionary, "commerce" means "interchange of merchandise on a large scale between nations or individuals", and, "commercial" means pertaining to commerce: mercantile: having profit as the main aim. . . . ". According to the Concise Oxford Dictionary, "commercial" means "of, engaged in, bearing on, commerce", and, "establishment" means "house of business", etc. According to Black's Law Dictionary (Sixth Edition), "Commercial establishment" is "a place where commodities are exchanged, bought or sold. . . The term contemplates a profit-making establishment", and "establishment" means "a place of business, with its fixtures and organized staff. Understood in this background, petitioner establishments has to be treated as a commercial establishments within the meaning of Item No. 28 of Part I of the Schedule to the Act.

Sri R. Gururajan, learned Counsel for the petitioner, submits that just as other employments are mentioned in Part I of the Schedule to the Act, unless the courier service is specifically mentioned, petitioner establishments cannot be brought within the ambit of general provision contained in Item No. 28 with regard to commercial establishments.

It is true, in respect of many of the specified categories of employment, the Schedule makes a specific reference to employment in particular sectors like stone breaking or stone crushing, oil mill, construction or maintenance of roads or in building operations, etc. While by such specification of particular categories of employment, the Legislature meant to cover the said specified categories, -- it is evident that, by adding as Item No. 28, "employment in shops and commercial establishments", the authority intended to bring in all those set-ups which could be called "shops and commercial establishments" within the purview of the Act. There could be no other explanation to the adding of such a wider term as employment in shops and commercial establishments at Item No. 28 in Part I of the Schedule to the Act. This intention is further made clear by the State Government by subsequently fixing minimum wages u/s 3 read with Section 5 of the Act as at Annexure-D in respect of the specified categories of employment in the shops and commercial establishments in the State of Karnataka. There is, therefore, no force in the contention of Sri R. Gururajan, learned Counsel for the petitioner, that unless in Part I of the Schedule to the Act, "Courier Service" is specifically mentioned, application of Annexure-D cannot be extended to the petitioner establishment.

Sri R. Gururajan, learned Counsel for the petitioner, refers to two decisions in this context. In *A.V. Prakash Vs. Senior Labour Inspector*, , the question that arose was whether Detective and Security Services had been covered by the Act. In Paragraph 6 of the order, this Court pointedly refers to the fact that the learned High Court Government Pleader therein conceded that no notifications had been issued by the State Government u/s 27 of the Act to add that particular type of employment either in Part I or Part II of the Schedule to the Act. The question as to whether, even though Detective and Security Services had not been specifically mentioned in either of the two parts of the Schedule to the Act, the said Detective and Security Services, having regard to the nature of its activities, could be brought within the purview of Item No. 28 of Part I of the Schedule to the Act, did not arise for consideration in the said case.

Sri R. Gururajan refers to a decision of the Supreme Court in *Labour Inspector, Central Vs. The Chittapore Stone Quarrying Co. (P) Ltd. and Others*, . The question that had arisen therein was whether the activity of quarrying in Shahabad stone fell within the purview of Item No. 8 of Part I of the Schedule to the Act, namely, employment in stone breaking or stone crushing. Speaking for the majority, His Lordship Palekar, J. referred to at length the nature of activities with regard to quarrying of Shahabad stones as distinct from stone breaking or stone crushing. His Lordship held that the minimum wages fixed for employment of stone breaking or stone crushing did not apply to the operation of quarrying of Shahabad stone. Here again, it was with reference to the nature of activities carried on that the Supreme Court held as to whether a particular employment was a scheduled employment.

Either of these two decisions, therefore, would not support the contention of the

petitioner. It is, therefore, to be concluded that the petitioner establishments does come within the purview of Item No. 28 of Part I of the Schedule to the Act. If that is so, Annexure-D would extend to the petitioner establishments also.

8. Sri R. Gururajan, learned Counsel for the petitioner, urges that the total pay packet to each of the employees of the petitioner would exceed what is prescribed under Annexure-D. Annexure-D separately specifies dearness allowance. In the light of the principles enunciated by a Division Bench of this Court in *M/s. Krishna Flour Mills and Others Vs. The Commissioner of Labour in Karnataka and Others*, , petitioner is not absolved from separately paying the cost of living allowance, merely because it pays higher rate of wages to its employees. Admittedly, dearness allowance is not being paid to the employees at present by the petitioner.

9. Sri R. Gururajan, learned Counsel for the petitioner, urges that, having regard to the nature of its activities, petitioner would stand exempted u/s 3(1)(j) of the Karnataka Shops and Commercial Establishments Act, 1961 ("Act of 1961"). Such an argument is inappropriate in the present context because, if exemption is available to the petitioner u/s 3(1)(j) of the said Act of 1961, it is solely for the purpose of the said Act of 1961. When, for the purpose of the Act i.e., Minimum Wages Act, 1948, petitioner establishments is referred to as a commercial establishment, it is done so not because it is a commercial establishments under the said 1961 Act, but because it is found covered by Item No. 28 of Part I of Schedule to the Act. Reference to Section 3(1)(j) of the Act of 1961, therefore, is of no consequence.

10. Sri R. Gururajan, learned Counsel for the petitioner, next contends that employees having raised charter of demands which is now the subject-matter of adjudication by the Labour Court, the dispute in that regard having been referred to the Labour Court and the payment of dearness allowance also being a matter to be adjudicated upon therein, second respondent authority should not have entertained employees' applications u/s 20(2) of the Act. Any demand, discussion, conciliation, settlement, award or adjudication with regard to minimum wages, could be only in respect of wages at a rate higher than what is determined u/s 3 read with Section 5 of the Act. No such demand, discussion, conciliation or settlement or award can result in reducing wages to a rate lower than the minimum wages payable under the Act. Section 25 of the Act also may be referred to which, inter alia, provides that any contract or agreement, whereby an employee either relinquishes or reduces his right to a minimum rate of wages under the Act, shall be null and void insofar as it purports to reduce the minimum rates of wages fixed under the Act. In the circumstances, therefore, mere pendency of the dispute before the Labour Court does not come in the way of employees concerned seeking relief before the second respondent authority by filing an application u/s 20(2) of the Act.

11. In the result, I have to conclude that the petitioner establishments is a scheduled employment covered by Item No. 28 of Part I of the Schedule to the

Act, and that Annexure-D, issued u/s 3 read with Section 5 of the Act, would extend to respondents 3 to 5 in Writ Petition No. 23095 of 1997 and respondents 3 to 18 in Writ Petition No. 23096 of 1997. The impugned orders, insofar as they direct payment of Rs. 8,740/- to each of the said employees, therefore, do not call for interference. The authority, however, acted arbitrarily in directing payment of compensation, even though he has restricted it to twice the amount of such difference as against 10 times that sub-section (3) of Section 20 provided for. The claim itself was belated and there had to be condonation of delay. Position itself was not clear and there was a bona fide difference of opinion as to the applicability of Annexure-D. In the circumstances, levying of compensation cannot be justified. Impugned orders to this extent need to be interfered with.

12. Both the writ petitions are partly allowed. Impugned orders of the second respondent at Annexure-L in each case, insofar as they direct payment of compensation, are quashed. The said orders are to be confined to payment of Rs. 8,740/- to each of the employees concerned herein for the relevant period.

Any amount paid in terms of the interim orders of this Court shall be duly adjusted in making payments to the employees concerned.