

(2025) 10 KL CK 1323
In the High Court Of Kerala
Case No : Writ Petition (C) No. 26208 Of 2025

Bhavesh Anil Kumar

APPELLANT

Vs

Assistant Labour Officer (Grade II)

RESPONDENT

Date of Decision : 30-10-2025

Acts Referred:

Minimum Wages Act, 1948 — Section 2(e), 20(2), 20(3), 22A, 22C
Factories Act, 1948 — Section 7(1)
Payment of Gratuity Act, 1972 — Section 2(f)

Citation : (2025) 10 KL CK 1323

Hon'ble Judges : K. Babu, J

Bench : Single Bench

Advocate : Kala G.Nambiar, V K Sunil

Final Decision : Dismissed

Judgement

1. The petitioner, former Managing Director of a private limited company by name 'Southwest Motorcorp India Pvt. Ltd.', challenges the order dated 31.3.2023 passed by the Deputy Labour Commissioner, Kannur in M.C.P.No.77/2018 under Section 20(3) of the Minimum Wages Act, 1948.

2. The petitioner along with the other Directors of the Company, entered into an agreement with Sri.Aboosaheer Abdul Samad and another, to sell the entire equity shares of the company. The agreement was materialised on 31.01.2022. According to the petitioner, he resigned from the post of Managing Director, in view of the agreement dated 20.1.2022.

3. The Assistant Labour Officer, Hosdurg, (respondent No.1) conducted an inspection in the company in 2018 and found that 19 employees were paid less than the minimum wages. Respondent No.1 filed a claim petition against the petitioner under Section 20(2) of the Minimum Wages Act (Ext.P2) before respondent No.2 seeking a direction to the petitioner to pay the deficit wages to the 19 employees. Respondent No.2 allowed the petition directing the petitioner to pay the deficit wages, as per order dated 31.3.2023 (Ext.P4). The challenge of

the petitioner is that the proceedings should have been initiated against the company itself, and therefore, the impugned order is vitiated due to the following reasons:

(a) Non-joinder of necessary party.

(b) The company is still in existence, and therefore, the liability to pay minimum wages rests with the company itself.

(c) The petitioner, being the Managing Director, was an unnecessary party, as he was not liable to make any payment in that capacity.

4. I have heard the learned counsel for the petitioner and the learned Government Pleader.

5. The learned counsel for the petitioner submitted that the petitioner has no liability to pay minimum wages as the liability rests solely with the company. It is submitted that the principle of vicarious liability is not applicable in the present facts. The learned counsel, relying on *Dayle De'souza v. Government of India* through Deputy Chief Labour Commissioner (C) [(2021) 20 SCC 135], submitted that the proceedings initiated against the petitioner, the former Managing Director of the company, before the Deputy Labour Commissioner, are liable to be quashed. The learned counsel submitted that as the company is still in existence the order is liable to be executed against the company.

6. The learned counsel for the petitioner further submitted that the petitioner was not given sufficient opportunity to contest the matter. He prayed for an opportunity for the petitioner to contest Ext.P2 claim petition. The learned counsel for the petitioner challenges the impugned order essentially on the ground that only the company, being the employer, is responsible for the payment of minimum wages. It is submitted that the petitioner, being the Managing Director, does not come under the definition of "employer" under the Minimum Wages Act, 1948.

7. The learned Government Pleader submitted that the 'employer' as defined under Section 2(e) of the Minimum Wages Act is any person responsible to the owner for the supervision and control of the employees. The contention of the learned Government Pleader is that the petitioner, being the Managing Director of the Company, was responsible for supervision and control of the employees, and therefore, he comes under the definition of 'employer'.

8. Section 2(e) of the Minimum Wages Act defines "Employer" as follows:

"2. (e) "Employer" means 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 under this Act, and includes, except in sub-section (3) of section 26,-

(i) In a factory where there is carried on any scheduled employment in respect of

which minimum rates of wages have been fixed under this Act, any person named under [Cl.(j) of sub-section (1) of Section 7 of the Factories Act, 1948 (63 of 1948)], as manager of the factory;

(ii) In any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is so appointed the head of the department;

(iii) In any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;

(iv) In any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person responsible to the owner for the supervision and control of the employees or for the payment of wages;

9. The period during which the minimum wages were due is from November 2017 to April 2018. Admittedly, the petitioner, in the capacity of Managing Director of the company, was responsible for the supervision and control of the employees for the relevant period. In *Thankamma v. Regional Joint Labour Commissioner, Kollam* (2025 KHC 846), while considering the scope of the term "employer" as defined in Section 2(f) of the Payment of Gratuity Act, 1972, substantially a *pari materia* provision, this Court held that a Manager in a factory is a statutorily recognized person (employer) as provided in Section 2(f) of the Payment of Gratuity Act.

10. Importing the principle declared in *Thankamma*, this Court is of the view that the Managing Director of the company under consideration is a statutorily recognized person to be treated as the "employer" as defined under Section 2(e) of the Minimum Wages Act, in a proceedings initiated under Section 20(2) of the said Act by the competent authority. Therefore, the Managing Director is a proper party and the order passed by the statutory authority under Section 20(3) of the Minimum Wages Act is binding on the petitioner-Managing Director, in the capacity as 'employer'.

11. Yet another contention raised by the learned counsel for the petitioner is that, as the company has been transferred by way of Ext.P1 agreement dated 20.1.2022, the liability now rests with the company.

12. The learned Government Pleader has taken me to Ext.P1 agreement, whereby the shares were transferred by the petitioner and the other Directors. Clause (5)(m) of the agreement reads thus:-

"5. Sellers Obligation

The Sellers/Company agrees, undertake and covenant:

xx xx xx

m. The sellers are responsible for all the liabilities, including tax and statutory liabilities including GST, Income tax dues up to the Assessment for the period of signing of this Agreement including which may arise after the signing of this Agreement but for the period up to the date of signing of this agreement."

The agreement was executed and came into effect in 2022. Minimum wages were due to the employees for the period from 2017 to 2018. Therefore, the transfer stated to have been effected by Ext.P1 has no impact on the liability of the petitioner to pay minimum wages .

13. The learned counsel for the petitioner further contended that the petitioner was not given sufficient opportunity to contest the proceedings. In the writ petition, the petitioner admitted that he was aware of the proceedings in MCP.No.77/2018 before respondent No.2, but stated that he could not follow up the proceedings after his resignation from the post of Managing Director of the erstwhile company. Therefore, the contention that the petitioner was not given sufficient opportunity to contest the proceedings has no force.

14. The reliance placed by the learned counsel for the petitioner on Dayle De'souza (supra) is of no relevance to the instant case. In Dayle De'souza, the Hon'ble Supreme Court was considering a complaint filed under Section 22A of the Minimum Wages Act against two Directors of a company. Interpreting the scope of Section 22C of the Minimum Wages Act, the Hon'ble Supreme Court held that, in the absence of the company being arrayed as an accused, the complaint was not maintainable. The facts in Dayle De'souza are entirely different from the facts considered herein.

15. As per Section 20(3) of the Minimum Wages Act, the statutory authority is required to hear the employer, the scope of which has been discussed above. The petitioner, being the employer at the relevant time, is bound by the impugned order. Therefore, the impugned order is not liable to be interfered with.

The writ petition stands dismissed.