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(2006) 08 DEL CK 0109

In the Delhi High Court

Case No : LPA No. 657 of 2004

Delhi Council for Child Welfare — APPELLANT

Vs

Sheela Devi and Another — RESPONDENT

Date of Decision : 28-08-2006

Acts Referred:
Delhi Shops and Establishments Act, 1954 — Section 2(5), 4
Factories Act, 1948 — Section 7
Minimum Wages Act, 1948 — Section 2, 20(2), 26(3), 27

Citation : (2006) 132 DLT 696 : (2007) 2 ILR Delhi 463

Hon'ble Judges : Mukul Mudgal, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Rajiv Bahl and S.P. Srivastava, for the Appellant; Sanjeev Sachdeva and Preet Pal Singh, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—These appeals are directed against the impugned judgment dated 3.1.2003 passed by the learned Single Judge in C.W.(P) No. 3654 of 1999 and C.W.(P) No. 3675 of 1999. By the said impugned judgment, the learned Single Judge dismissed the said writ petitions filed by the appellant herein and affirmed the order dated 2.12.1998 passed by the competent authority under the Minimum Wages Act, 1948 (''Act'') holding that the appellant herein was bound to pay minimum wages to two of its workers namely Smt. Ramesh Kumari (Respondent No. 1 in L.P.A. No. 909 of 2003) and Smt. Sheela Devi (Respondent No. 1 in L.P.A. No. 657 of 2004).

2. The question arising in these appeals, and which arose before the learned Single Judge, is whether the appellant Delhi Council for Child Welfare is covered by the provisions of the Act and is accordingly under an obligation to pay minimum wages to its workmen.

3. The admitted facts are that both Smt. Ramesh Kumari and Smt. Sheela Devi are Balsevikas employed by the appellant. Smt. Ramesh Kumari was being paid

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Rs 680/- per month from 1.4.1993 onwards as against her entitlement for minimum wages which was Rs 1176/- per month for the period 1.4.1993 to 31.7.1993 and Rs 1217/- per month from 1.8.1993 onwards. Smt. Sheela Devi was receiving wages at Rs 700/- per month between January and March 1994 and Rs 825/- per month for the period between April 1994 to June 1994 whereas for this entire period she was entitled to minimum wages of Rs 1830/- per month. Some time in 1994, two separate applications were filed by the said Balsevikas before the competent authority u/s 20(2) of the Act.

4. The competent authority by its order dated 2.12.1998 negatived the contents of the appellant herein and held that the appellant was covered by the definition of Section 2(5) of the Delhi Shops and Establishment Act, 1954 (''Shops Act'') and consequently covered by the provisions in the Act by virtue of a notification dated 15.2.1994 issued u/s 27 of the Act. It was further held by the competent authority that while the claim of Smt. Sheela Devi was barred by time for the period 1.1.1994 to 18.1.1994 she was entitled to claim the difference between the minimum wages prescribed and the actual salary drawn by her from 19.1.1994 to 30.6.1994 amounting to Rs 5327/-. As regards Smt. Ramesh Kumari her claim for the period 1.4.1993 to 28.4.1993 was held to be barred by time. She was held to be entitled to an amount of Rs 2524/- being the difference between the minimum wages and actual salary drawn by her for the period from 29.4.1993 to 30.9.1993. Both the applicants were awarded Rs 500/- each towards costs of litigation.

5. The appellant society thereupon filed writ petitions in this Court challenging the said order dated 2.12.1998. Pursuant to an interim order passed in the writ petitions, the amounts directed to be paid to Smt. Ramesh Kumari and Smt Sheela Devi were deposited by the appellant in Court and thereafter withdrawn by the said two persons.

6. By the impugned order dated 3.1.2003, the learned Single Judge dismissed the writ petition after coming to the following conclusions:

(a) The appellant society was a commercial establishment within the meaning of Section 2(5) of the Shops Act, particularly in view of the decisions of Hon''ble Supreme Court in Chief Commissioner, Delhi and Others Vs. Federation of Indian Chambers of Commerce and Industry, New Delhi and Others, and Management of The Federation of Indian Chambers of Commerce and Industry Vs. Their Workman, Shri R. K. Mittal, .

(b) The notification dated 13.8.1965 issued by the Government of India u/s 27 of the Act clarified the position that all shops and establishments covered by the Shops Act would also be covered by the Minimum Wages Act. Even though this notification was not considered by the competent authority, and the issue had been decided by the competent authority on the basis of the notification dated 15.2.1994, there was no need to remand the matter to the competent authority for this purpose since the notification dated 13.8.1965 was merely clarificatory of

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the legal status of the appellant.

(c) The plea of the appellant that the Union of India should be directed to release additional funds with effect from 1.10.1993, in order to enable the appellant to meet its liabilities under the Act, could not be considered in these writ petitions particularly when the appellant had filed a separate writ petition against the Union of India for that purpose. The non-release of funds by the Central Government could not be a ground for the appellant avoiding its statutory liability under the Act.

(d) The directions issued on 16.2.2000 to the appellant to start paying minimum wages to the Respondents from 1.10.1993, along with the arrears, within a period of three months was reiterated. An application filed by the appellant for modification of the said order was dismissed.

7. On 29.5.2006, when these appeals were listed for hearing, this Court was informed by the counsel for Respondent No. 1 that the payments as directed by the learned Single Judge had not been made. However, the counsel for the appellant maintained that all the amounts had been paid. In the circumstances, on 29.5.2006 this Court passed the following order:

In the circumstances, we think it necessary, in order to proceed further in the matter, to direct the appellant to file an affidavit stating clearly the exact amount due and payable by the appellant to respondent No. 1 under the earlier directions contained in the order dated 16.2.2000 read with the impugned judgment dated 3.1.2003 of the learned Single Judge. The said affidavit will also state if and when the said amount was paid. In case the amount has not yet been paid it shall be done so forthwith and that should also be indicated in the affidavit. The appellant may file such affidavit on or before 4.7.2006. Respondent No. 1 is permitted to file a reply to the said affidavit within four weeks.

8. When the matter was listed on 7.8.2006, it was noticed that the additional affidavit as directed had not been filed. In those circumstances, the Court passed the following order:

In spite of one pass-over, the learned Counsel for the appellant seeks adjournment on the ground that the senior counsel is not available and he is not in a position to argue the matter. We are of the view that this is no ground for adjournment. Though a detailed order has been passed by this Court directing the appellant to file an additional affidavit on or before 4th July 2006, even after passage of more than a month, the learned Counsel for the appellant has not complied with the said order. In this view of the matter, we reserve orders.

Later, Mr. Rajiv Bahl, learned Counsel for the appellant appeared and sought sometime to file written submissions. He is permitted to do so by 11.8.2006.

Pursuant to above order, written submissions running to 30 pages have been filed by the appellant on 18.8.2006.

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9. The principle contentions of the appellant as contained in its written submissions are as under:

(a) The appellant, which is a society registered under the Societies Registration Act, 1860, is a voluntary organisation engaged in child welfare activities and is not carrying on a trade, business or profession. The appellant cannot be considered to a commercial establishment u/s 2(5) of the Shops Act. The learned Single Judge erred in following the judgment of the Gujarat High Court in Ahmedabad Panjrapole Sanstha v. Miscellaneous Mazdoor Sabha 1987 LAB. I.C. 577 in as much as the definition of commercial establishment u/s 2(5) of the Shops Act is different from Section 2(4) of the Bombay Shops and Establishment Act.

(b) The appellant is not carrying on any activity which is covered by the Schedule I or II or any notification issued under the Minimum Wages Act.

(c) The notification dated 15.2.1994 only revises the minimum wages already fixed under an earlier notification dated 28.4.1989 and does not declare that all shops and establishments covered by the Shops Act would come within the purview of Section 2(g) of the Minimum Wages Act as a scheduled employment. Thus the competent authority committed a grave error in holding that the notification dated 15.2.1984 resulted in the appellant being covered by the Minimum Wages Act.

(d) The appellant society is not covered by any notification issued u/s 27 of the Minimum Wages Act nor is it covered under any scheduled employment within the meaning of Section 2(g) of the Act. Smt. Ramesh Kumari and Smt. Sheela Devi are not employees within the meaning of Section 2(i) of the Act. There is no relationship of employer or employee between the parties within the meaning of the Act and as such the provisions of the Act are not applicable.

(e) Relying on the judgment of the Hon''ble Supreme Court in Sanjit Roy Vs. State of Rajasthan, the appellant contends that the Government of India is under a moral and legal obligation to release grants to the appellant to enable it to meet its liability under the Minimum Wages Act particularly since its workmen were employed for the purpose of executing a scheme of the Government of India.

10. We may first notice the relevant provisions of the Minimum Wages Act which read as under:

Section 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

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named under [clause (f) 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 of 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;

(i) 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;

(ii) 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;

Section 2(g) : ''''scheduled employment'''' means an employment specified in the Schedule, or any process or branch of work forming part of such employment;

Section 2(i) : ''''employee'''' means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the [Union].

Section 27 of the Act reads as under:

27. Power of State Government to add to Schedule.-- The appropriate Government, after giving by notification in the Official Gazette not less than three months'' notice of its intention so to do, may, by like notification, add to either Part of the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act, and thereupon the Schedule shall in, its application to the [State] be deemed to be amended accordingly.

Parts I and II of the Schedule to the Act specify the various kinds of employment for the purposes of Section 2(g) of the Act.

11. At the outset it may be noticed that the appellant does not deny that the two workers, Smt. Ramesh Kumari and Smt. Sheela Devi, are employed with the

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appellant as Balsevikas. The ground now urged is that the appellant is not employer and they are not employees within the meaning of Minimum Wages Act only because the activity of child welfare is not listed as a scheduled employment under the Minimum Wages Act. It is contented that there is no notification issued u/s 27 of the Act by the appropriate Government to include the activities of the appellant in the Schedule to the Act. Therefore, the activities of the appellant cannot be characterised as a Scheduled Employment. Consequently it is contended that the Act can have no application and Therefore, the appellant is not required to pay minimum wages to its employees.

12. In the first place it must be noticed that these argument that the activities of the appellant does not constitute a Scheduled Employment is clearly unacceptable in view of a notification dated 13.8.1965 issued by Government of India u/s 27 of the Minimum Wages Act. By the said notification an amendment was made to the Schedule to the Act and Item 15 was introduced. The said amendment reads as under:

AMENDMENT

In Part I of the said Schedule, after item 14 the following new item shall be added, namely:

15. Employment in all shops and other establishments, covered by the Delhi Shops and Establishments Act, 1954.

That this notification was not disputed by the appellant either before the learned Single Judge or in the appeal or written submissions before us. Therefore both the competent authority and the learned Single Judge rightly proceeded to examine whether the appellant was an establishment covered by the Shops Act. If indeed it was, then it would undoubtedly be covered by the Minimum Wages Act by virtue of the above amendment.

13. Section 2(5) of the (Shops Act), which is relevant for the purposes of the present case, reads as under:

''''Section 2(5)'''' : ''commercial establishment'' means any premises wherein any trade, business or profession or any work in connection with, or incidental or ancillary thereto is carried on and includes a society registered under the Societies Registration Act, 1860 (XXI of 1860) and charitable or other trust, whether registered or not, which carries on any business, trade or profession or work in connection with, or incidental or ancillary thereto, journalistic and printing establishments, contractors and auditors establishments, quarries and mines not governed by the Mines Act, 1952 (23 of 1952), educational or other institutions run for private gain, and premises in which business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on, but does not include a shop or a factory registered under the Factories Act, 1948 (63 of 1948) or theatres, cinemas, restaurants, eating houses, residential hotels, clubs or other places of public amusements or entertainment.

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14. The competent authority relied upon the judgment of Hon''ble Supreme Court in Federation of Indian Chambers of Commerce and Industry v. R.K. Mittal (Supra) and Chief Commissioner Delhi v. Federation of Indian Chambers of Commerce and Industry (supra) and came to the conclusion that the appellant was a commercial establishment within the meaning of Section 2(5) of the Shops Act. The competent authority observed as under:

It is also the case of the management that the respondent society is providing the services of vocational training for drop out boys and girls and mid-day meals for them, Rehabilitation on and treatment of physically handicapped children, rehabilitation of working children/vocational training, supervise home-work schemes for school going children, sponsoring programmes for various categories of children having no financial support, running creches, balwadis, nutrition programme, anganwadi training center, and nucleus administration. Thus although the respondent society may not be doing its activities for the purpose of profit but like Chief Commissioner''s case (supra) before the Apex Court, the activities of the respondent society shall be termed as business activities notwithstanding the fact that these activities are not for the purpose of any profit motive or sharing profit by the members. The definition of commercial establishment as given in Section 2(5) of the Shops Act includes society registered under the Societies Registration Act, 1860 and charitable or other trust whether registered or not which carry on any business, trade or profession or any work in connection therewith or incidental thereto. Thus since respondent society is doing business activities it is commercial establishment within the meaning of Section 2(5) of the Shops Act and is covered as schedules employment within the meaning of Section 2(g) of the Act by virtue of the notification No. F.12(12)/92-MW/Lab-143 dated 15.1.94 issued under the Act.

15. The learned Single Judge noticed that the notification dated 15.2.1994 referred to by the competent authority was a notification revising the minimum wages applicable to all shops and establishments and that even though the parent notification was the one dated 13.8.1965 which was not before the competent authority, the conclusion reached by the competent authority was nevertheless the correct one. The learned Single Judge also independently examined the issue and after referring to the judgments in Ahmedabad Panjrapole Sanstha (supra), State of Gujarat v. Sthanakvasi Jain Mota Sangh 1995 III LLJ Suppl 519, and the judgments of the Hon''ble Supreme Court, concurred with the view taken by the learned competent authority.

16. Having examined the records of the case and the order of the competent authority and the impugned order of the learned Single Judge, we are of the view that the concurrent findings of both the competent authority and learned Single Judge do not call for any interference. Although the expression sought to be defined u/s 2(5) of the Shops Act is that of a ''commercial establishment'', what is contained in the definition is indicative of the wide sweep of those words. The definition is an inclusive one and expressly includes '''a society registered under

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the Societies Registration Act, 1860 and charitable or other trust whether registered or not, which carries on any business, trade or profession or work in connection with, or incidental or ancillary thereto.'' We may add that the word ''work'' is wide enough to include the activities of an organisation like that of the appellant before us. If even a charitable trust which obviously would not be engaged in any commercial activity for profit is expressly included in this definition, as is a Society, we see no reason why it would not include the appellant. It may also be noticed that latter part of the definition excludes certain types of establishments. In other words, the definition expressly states that it ''''does not include a shop or a factory registered under the Factories Act, 1948,'' theatres, cinemas, hotels, eating houses, restaurants, health clubs or other places of public amusement or entertainment.'''' The purpose of this exclusion is that, but for such an exclusion these establishments would otherwise be included in the definition. If it was the legislative intention to expressly exclude establishments like that of the appellant, then that would have been expressly stated in the definition itself. The absence of such an exclusion has to be construed to mean that organisations and establishments like that of the appellant would fall in the inclusive ambit of definition. A further aspect is that the definition is relatable to a ''premises'' where the activity or work is carried on. Section 4 of the Shops Act envisages the grant of exemptions of two kinds from the provisions of the Act. As indicated in the Schedule to the Act, the exemption could be to an establishment or it could be to a category of employee. Even here, the exemption could be either from all of the provisions of the Act or particular provisions of the Act. The list of establishments and employees contained in the Schedule is fairly large. It is significant that the establishments like that of the appellant, or employee like the Respondents herein, do not figure in any of these lists. An establishment like the appellant also envisages a workplace where persons like the Respondents herein would work for specified hours of the day performing tasks as in any other work place. There is no reason why such employees should not be extended the benefit of the Shops Act. This is also a beneficial legislation and its provisions must be interpreted in that light. We are of the view that the appellant is covered by the definition contained in Section 2(5) of the Shops Act.

17. Once it is clear that the appellant falls within the ambit of Section 2(5) of the Shops Act, the Minimum Wages Act gets attracted by virtue of the notification dated 13.8.1965 issued u/s 27 of the Act. Therefore, the activity of the appellant is a Scheduled Employment, the appellant ''employer'' and the two Balsevikas are ''employees'' within the meaning of the Act. Thus the contentions of the appellant as noticed in Para 9 (a) to (d) above are without merits. We may add that the learned Single Judge was justified in rejecting the plea of the appellant that the matter required to be remanded to the competent authority for determining the applicability and effect of the notification dated 13.8.1965, which admittedly had been produced for the first time before the learned Single Judge. This would have been a pointless exercise involving the wastage of precious time

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and further litigation. Since the said notification has been considered by the learned Single Judge, there was no need for any remand of the matter.

18. As regards the last submission of the appellant concerning the liability of Union of India, the learned Single Judge referred to the judgment of the Hon''ble Supreme Court in Sanjit Roy (supra) and rightly observed that this matter had to be taken up by the society with the Union of India. The learned Single Judge also noticed that the appellant had already filed a writ petition against Union of India for release of adequate funds. We concur with the learned Single Judge that the mere fact that the appellant has to get grants from the Central Government for running the scheme for the purposes of which the Bal Sevikas are employed, cannot enable it to avoid the statutory liabilities under the Act. Thus the directions sought by the appellant to the Union of India to release the grants to enable it to meet its liabilities under the Act, cannot be granted in these proceedings.

19. Before concluding we must once again reiterate what was said in order dated 29.5.2006. In the said order, the order of the learned Single Judge passed on 16.2.2000 directing the appellant to pay minimum wages to the Respondents from 1.10.1993 along with arrears was noticed. It was further noticed that said order dated 16.2.2000 had been reiterated in impugned order dated 3.1.2003 of the learned Single Judge who declined modification of the said order dated 16.2.2000. As noticed hereinbefore, it is not clear whether the appellant has in fact complied with the said directions. It is unfortunate that the appellant did not comply with the order dated 29.5.2006 passed by this Court requiring it to file an affidavit stating the amounts due and payable as per the order dated 16.2.2000 of the learned Single Judge. Even as on 7.8.2006 no such affidavit was filed. Unfortunately, even in the written submissions dated 18.8.2006 running into 30 pages there is not a single word on whether the order dated 16.2.2000 of the learned Single Judge has been complied with or not. We do not appreciate the failure of the appellant to inform this Court whether the said order has been complied with or not. We also fail to appreciate the reluctance of the appellant to pay minimum wages to its employees as is evident by its persistence with this litigation for nearly twelve years. We may only reiterate that the appellant is bound to comply with the said order, if already not complied with, without any further delay.

20. With the above directions, the appeals are dismissed with costs of Rs. 5000/- each to be paid by the appellant to Respondent No. 1 in each of the appeals within a period of four weeks, and in any event not later than 30.9.2006.

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