

(1973) 12 CAL CK 0016

In the Calcutta High Court

Case No : Civil Revision Case No. 1877 of 1973

Ghanda Singh Motor Service Pvt. Ltd.

APPELLANT

Vs

Inspector, Minimum Wages

RESPONDENT

Date of Decision : 07-12-1973

Acts Referred:

Constitution of India, 1950 — Article 227

General Clauses Act, 1897 — Section 15

Minimum Wages Act, 1948 — Section 13(1), 14, 2, 20, 20(1)

Citation : (1974) 1 ILR (Cal) 292

Hon'ble Judges : Amaresh Roy, J

Bench : Single Bench

Advocate : Mukul Gopal Mukherjee, for the Appellant; S.C. Das Gupta and T.K. Sen Gupta, for the Respondent

Judgement

Amaresh Roy, J.—This Revision case has arisen by issue of a Rule nisi by this Court upon an application made under Article 227 of the Constitution praying for a revision of an order made on February 15, 1973, by the District Judge, Burdwan, as the Authority under the Minimum Wages Act, 1948, in Misc. Case No. 128 of 1970.

2. That proceeding before the District Judge commenced upon a petition made by an Inspector of Minimum Wages, Chander nagore, in Hooghly District, complaining that the employer company M/s Ghanda Singh Motor Service Pvt. Ltd. having its registered office in the headquarter town of Burdwan had failed to implement the minimum rates of wages in respect of their employees twenty-five in number of whom seven are drivers, eight are conductors and ten are cleaners, mentioned in the schedule to the petition, and by that petition a claim of Rs. 2,202-24 (rupees two thousand two hundred two and twenty four paise) was made for the period November 1969 to April 1970. There was also a prayer for a compensation to the extent of five times of that claim amount. Upon that application the Misc. Case No" 128 of 1970 in the Court of the District Judge, Burdwan, was registered on May 27, 1970. Notice of that proceeding was given

to the employer company who was joined as the opposite party in the proceeding but no notice appears to have been given to any one of the employees to whom the amount of the difference remaining unpaid and also the compensation claim would be paid.

3. The claim was contested by the employer company by filing written statement and raising several grounds including the contention first that the claim should not be entertained at all because (i) the employees get the benefit of other emoluments and perquisites in the form of food and clothing over and above cash wages for which reason the employees can have no claim at all, and (ii) the notification of revised rates of Consumers' Price Index was not within the knowledge of the employer company and that was not brought to the notice of the employer company at any time. It was imputed that the proceeding had been initiated by the Inspector of Minimum Wages, Chandernagore, for ulterior purposes. The learned District Judge heard the matter on evidence by examining witnesses in the box and the witnesses were examined on both sides and documents were produced in evidence.

4. The learned District Judge by his order dated February 1-5, 1973, held against the contention of the employer company and ordered that the case be allowed on contest with costs. The Respondent company do pay the entire amount under claim as decretal dues within three months from this date, in default, law will take its own course. Pleader's fee Rs. 32.-It may be mentioned here that the total claim including the compensation mentioned in the petition by the Inspector was Rs. 13,213-41 (rupees thirteen thousand two hundred and thirteen and forty-four paise only) although the learned Judge in his order has said that the total claim is to the extent of Rs. 11,011-20 (rupees eleven thousand and eleven and twenty paise) which amount was only the compensation being five times the claim out of wages not paid, that amount being Rs. 2,202-24 (rupees two thousand two hundred and two and twenty four paise).

5. Against that order of the learned District Judge as the Authority appointed u/s 20 of the Minimum Wages Act, 1948, the employer company has moved this Court for revision under Article 227 of the Constitution. In the application for revision the applicant Inspector alone has been made the sole opposite party. The Rule was issued on June 11, 1973, by the order of my learned brother N. C. Talukder J. and by that order interim stay was granted. Upon service of the notice of the Rule on the opposite party, the Government pleader Mr. S. C. Dasgupta has appeared to oppose the Rule.

6. Mr. Mukul Gopal Mukherjee, learned Advocate for the Petitioner, has pressed before me the two contentions that were raised in the written statement of the employer company that the claim should not have been allowed at all because the employees get the benefit of emoluments and perquisites over and above cash wages so much so that they have no claim at all, and that the notification of revised Consumers' Price Index was not within the knowledge of the employer company, that revised notification having been published in the Calcutta Gazette

only in March 1970. In addition, Mr. Mukherjee also urged another contention in this Court that imposition of the compensation to the extent of five times of the claim proper has been an improper exercise of judicial discretion and also irregular exercise of the jurisdiction. In his endeavour to substantiate those contentions Mr. Mukherjee took me through the order of the learned District Judge and also drew my attention to several sections in the Minimum Wages Act, 1948, particularly to Section 20 of that Act. As this is really an issue of exercise of the power under Article 227 of the Constitution the purpose of which superintending jurisdiction is to keep the Tribunals within bounds of jurisdiction vested in them by law, it would be necessary to examine some of the provisions of the Act and also the particular provision in Section 20 with its several Sub-sections for considering the legality and propriety of the order of the District Judge that has been brought up to this Court. For so doing I heard the learned Government Pleader, Mr. Das Gupta, who has appeared for the opposite party and drew upon his assistance . for resolving several questions of importance that appear to arise in respect of the provisions in the Act.

7. First, I shall point out that Mr. Mukherjee's contention that the Consumers' Price Index which appears to have been published in Calcutta Gazette of March 12, 1970, is the notification of fixing minimum wages u/s 5 of the Act is erroneous. That publication of the Consumers' Price Index though printed in the Calcutta Gazette is not a notification at all. The notification u/s 5 fixing minimum wages was filed before the learned District Judge and has been made a part of the record which is the Labour Department Notification No. 338-LW/LW/2W-4/69 dated March 31, 1969, published in the Calcutta Gazette of June 5, 1969, in pt. I, p. 877. That notification was brought before the learned District Judge as Ex. 2A. It fixes the minimum rates of wages and dearness allowances per month payable to the employees employed in public transport companies in West Bengal. The relevant entries in that notification are entries in zone 3 in which zone the District of Burdwan is.. In Clause (d) in the schedule to that notification provision has been made that the rate of dearness allowance shall correspond to the average Consumers' Price Index number for the year 1967 published by the competent Authority appointed under Clause (c) of Section 2 of the Act in respect of index series mentioned in col. 1 of the table printed in that notification. Then Clause (c) provides that it will be adjusted to accord as nearly as practicable,, both upward and downward, with the variation of ten points in the Consumers' Price Index number. No change shall be effected unless there has been a variation of clear ten points. The rate of adjustment of dearness allowance for ten points rise and fall in the Consumers' Price Index number shall be as indicated in that table. That notification is appearing in the Calcutta Gazette, March 12, 1970, in the form of Minimum Wages Act, 1948. In pt. 1(C), p. 218 is the Consumers' Price Index number for industrial workers concerning the centre Asansol. There the general index appears as 180. Therefore, there is no error in the calculation of the minimum wages that was payable during the period of November 1960 to April 1970 and the claim made in the schedule of

the petition of the Inspector filed before the District Judge in respect of each of the employees has been correctly shown against his name" in that schedule. The total amount of claim was, therefore, correctly Rs. 2,202-24.

8. Yet on examining Section 20 in its several Sub-sections questions have arisen which need be stated. It is well to remember that the Minimum Wages Act, as it was enacted by the Dominion Legislature in 1948, has undergone changes in language in many sections including Section 20 by several amendments carried out from 1950 to 1957. By the effect of those amendments subs. (1) of Section 20 has been amended also. I quote below subs. (1) of Section 20 as it stood before the amendment in 1957 and also what it now appears after the amendment of 1957: Before 1957--

20(1) The appropriate Government may, by notification in the Official Gazette, appoint any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a civil Court or as a stipendiary Magistrate to be the Authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages to employed or paid in that area.

After 1957--

20(1). The appropriate Government may, by notification in the Official Gazette, appoint any Commissioner or Workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any region or any officer of the State Government not below the rank of Labour Commissioner or any other officer with experience as a Judge of a civil Court or as a stipendiary Magistrate to be the Authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates. of wages or in respect of payment of remuneration for days of rest or for work done on such days under Clause (b)"or Clause (c) of Sub-section (1) of Section 13 or of wages at the overtime rate u/s 14 to employees employed or paid in that area.

In both, the phrase "other officer with experience as a Judge of a civil Court" appears. But the particular notice appears to be necessary in that Sub-section as it stands after the ..amendment of 1957. Mention of two categories of officers were added in that Sub-section (1), viz. "any officer of the Central Government exercising functions as a Labour" Commissioner for any region" and the other "any officer of the State Government" and then before the phrase "other officer with experience as a Judge .of a civil Court" the" word "any" has been added. The construction on the present language now availing is the phrase "any other officer, with experience as a Judge" is preceded in that very Sub-section twice by "any officer" while referring to the two categorist, one of the Central Government and the other of the State Government. A question may arise now, whether for appointing an officer with experience as a Judge as an Authority under subs. (1) of Section 20 if the appointment need have to be by reference to the person Who

is the officer or may be by reference to the Presiding Officer of the Court or office by referring only to his office. It is noticeable that under the language that was availing before the amendment of 1957 there was a notification No. 3425-Lab dated June 23, 1950, which was in these terms:

Government of West Bengal

Labour Department

NOTIFICATION

No. 3425-Lab, Calcutta, the 23rd June 1950.

In exercise of the power conferred by Sub-section (1) of Section 20 of the Minimum Wages Act, 1948 (XI of 1948), the Governor is pleased to appoint every District Judge in the State of West Bengal to be the Authority to hear and decide for the area within the local limits of his jurisdiction all claims arising out of payment of less than the minimum rates of wages to employees employed or paid in that area.

By order of the Governor

D.S.P. Mukherjee

Jt. Secy, to the Govt., of West Bengal

The learned Advocate for the opposite party has produced a notification of 1951 which is the . Notification No. 7192-Lab/3A-62/51 dated October 16, 1951, published in the Calcutta Gazette dated October 25, 1951, pt. I, p. 2801. Language in that notification of 1951 is the same as appears in the notification of 1950 above quoted. Even then I quote the text of that notification" of 1951 only for the reason that it is not clear to me why that latter notification was necessary. It is in these terms:

Government of West Bengal

Labour Department

NOTIFICATION

No. 7192-Lab/3A-62/51 16th October, 1951

In exercise of the power conferred by Sub-section (1) of Section 20 of the Minimum Wages Act. 1948 (XI of 1948), read with Government of India, Ministry of Labour, Notification No. LWI. 24 (61), dated the 20th June, 1951 (S.R.O. 1951), the Governor is pleased to appoint every District Judge in the State of West Bengal to be the Authority to hear and decide for the area within the local limits of his jurisdiction all claims arising out of payment of less than the minimum rates of wages to employees employed or paid in that area.

By order of the Governor

Sd/ D. S, P. Mukherjee

Joint Secretary, West Bengal

After the amendment to which I have referred to above-a notification on the same subject appears in the Notification No. 423-L.W-/ LW/1A-204/57 dated" February 12, 1958, which has been issued by the Government of West Bengal, Labour Department. I have availed of that notification of, 1958 by the assistance rendered by the office of the District Judge, Burdwan. The notification is quoted below: - .

Government of West Bengal

Labour Department

NOTIFICATION

No. 423-L.W./LW/1A-204/57-Calcutta, the 13th February, 1958

In exercise of the power conferred by Sub-section (1) of Section 20 of the Minimum Wages Act. 1948 (XI of 1948), read with the Government of India, Ministry. of Labour, Notification No. LWI. 24.(61), dated the 20th June, 1951, (S.R.O. 951), and in supersession of all previous notifications on the subject, the Governor is pleased hereby to appoint every District Judge in the State of West Bengal to be the Authority to hear and decide for the area within the local limits of the jurisdiction all claims referred to in the said Sub-section.

By order of the Governor

S.K. Banerji

Joint Secretary to the

Govt., of West Bengal.

In all these notifications the appointment of the Authority under subs. (1) of Section 20 has been by reference to the office of the District Judge and not by reference to any person, that is, a particular officer. Mr. Dasgupta, learned Government Pleader, himself was frank to express his own doubts about the correctness of the notification in which the appointment has been made. I have my own doubts too despite my attention having been drawn to a judgment of the Judicial Commissioner of Tripura in *Malabati Tea. Estate v. Sm. Budhni Munda*. AIR 1959 Tri. 16 . In that decision it has been said:

Another contention which went to the root of the jurisdiction of the Authority was based on Section 20, which says that .the appropriate Government may by notification appoint an officer^ with experience as a Judge of a civil Court to be the Authority to decide such claims. It was contended that this meant that the appointment must be by name, while in the present case it was only by office, namely the Munsif, Sadar.

In my opinion, the contention is misconceived, and the words "other officer with experience as a Judge of a civil Court" only mean that the officer should be working or should have worked as a Presiding Judge of a civil Court. The point is further concluded by the provisions of Section 15 of the General Clauses Act which provides that when a power to appoint any person to fill any office or execute any function is conferred by any Central Act or Regulation, then, unless it is otherwise expressly provided, any such appointment may be made either by name or by virtue of office. That clearly takes the plank away from under the contention advanced, and it must be held that the Authority in this case was a lawfully constituted authority.

9. To hold so may entail the result that, though at the time of notification of the appointment, the incumbent of the particular office may have the necessary qualification, another incumbent to that office posted later may not have that qualification required by the section. In West Bengal it is quite possible that a District Judge of Burdwan or any other district may not have been a Judge of civil Court for ten years, if he is one recruited in the Higher Judicial Service of the State directly from the Bar less than ten years ago.. Correct form of appointment of an Authority u/s 20(1) needs, therefore, serious consideration, though in the present case that difficulty has neither appeared nor been mooted at the Bar.

10. In view of the order that I am going to pass in this case it is not necessary to pursue that query except drawing attention of the Authorities concerned including the District Judge, Burdwan, and for the matter of that, all District Judges in West Bengal to be certain that the appointment of each of them as an Authority under Sub-section (1) of Section 20 of the Minimum Wages Act, 1948, has been properly and correctly achieved by the current notification.

11. Another aspect in the conduct of the proceeding appears in Sub-section (2) of Section 20 of the Act. By changing the language in Sub-section (2), as it stood before, the present Sub-section (2) begins with the words "where an employee has any claim of the nature referred to in Sub-section (1)" and then enables the employee himself and other persons mentioned including any Inspector to apply to the Authority for a direction under Sub-section (3). In view of those opening words now appearing in Sub-section (2) there cannot be any doubt that essential prerequisite for an application by any of the persons mentioned in the Sub-section other than the employee himself is not merely the omission on the part of the employer to pay but also the existence of a claim by the employee of the nature referred to in Sub-section (1). In the whole of the proceeding the records of which have been brought up to this Court, including the petition upon which the present proceeding was started, there is no clear indication that any of the 25 employees far less all of them had made any claim of the nature referred to in Sub-section (1) either to the employer or to the Inspector or for the matter of that to the Authority, that is, the District Judge. Yet without adverting to that necessity appearing in the language of Sub-section (2) the learned District Judge has proceeded to make a direction under Sub-section (3) of Section 20. On this

point also I entertain a doubt about the correctitude of the proceeding as has been conducted and allowed to be carried on in the Court of the District Judge. But this point also is not necessary to decide in view of the order that I am going to pass in this case. However, I have to point out that the contents of Section 8(2) & (3) are clear enough that the claim must be the claim of the employee and the direction of the Authority for payment must be a direction for payment to the employee and not to any other, not even to the Inspector who may make the application under Sub-section (2) of Section 20. In the order made by the learned District Judge in this case, that aspect has been completely neglected, not only so, the learned District Judge has said something in his ordering portion which is, to say the least, inapt, incorrect and improper. There is no warrant in the whole of the Act for the learned District Judge, to say, as he has said that the "company do pay the entire amount under claim as decretal dues within three months from this date and satisfied himself by merely saying "in default, law will take its own course.". The poor employees, who are the beneficiaries of this social legislation in the form of Minimum Wages Act, 1948, justifiably look to the Authority, that is, the District Judge u/s 20 of the Act to operate the law for their benefit and not indulging, unmeaning, and vague phraseology leaving the beneficiaries almost to the lurch.

12. In this connection; I need draw attention of the District Judge to the contents of Sub-section (5) of Section 20 which are in these terms:-

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.

The mode of recovery prescribed in that Sub-section is that it requires the learned District Judge to make an application in that behalf to a Magistrate, whether that looks incongruous or not, is a question which the District Judge may take up administratively with the Administrative Department of the High Court. But the provision in the section of the Act is very clear indeed. Last of all, I do find that the criticism of Mr. Mukul Gopal Mukherjee that the imposition of the compensation to the extent of five times the claim proper, as was prayed for by the Inspector, has been acceded to by the learned District Judge without applying his judicial mind at all, as if he was carrying the behest of a superior authority. To this extent the learned District Judge has not exercised his jurisdiction properly and has been in error in exercise of his judicial discretion. I would, therefore, set aside this order of the learned District Judge as an Authority u/s 20 of the Minimum Wages Act, 1948, and direct that the matter goes back to the learned District Judge at the stage when the application has not yet been disposed of.

12. When that stage is reached, the learned Advocate for the Petitioner has

prayed for the opportunity to deposit the entire amount of the claim, that is Rs. 2,202-24, along with such compensation as the Court may award in the Court of the learned District Judge, do consideration of the entire circumstances and upon taking into consideration the statements made before me for the Petitioner and also by the learned Government Pleader, I fix the compensation at double the amount of claim proper which will amount to Rs. 4,404-48, instead of five times thereof and direct -that the Petitioner company shall deposit the entire amount of claim and compensation in the total Rs. 6,606-72 before the learned District Judge within January 10, 1974. When that has been so deposited within time in terms of r. 26A of the West Bengal Minimum Wages Rules, 1951, the learned District Judge as the Authority under the Minimum Wages Act will take steps to pay the amount due to the each individual employee both the claim and compensation due to him upon being satisfied about the identity of the person receiving the amount as has been provided in r. 26A of the above-mentioned Rules.

13. The Rule is, accordingly, disposed of. The records be sent down without delay. There will be no order as to costs in this Rule.