
(2010) 01 JH CK 0020
In the Jharkhand High Court

Jai Bharat Construction Co., Bakhat Ram Mandhyan and Co.
and Namrata Stone Works

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-01-2010

Acts Referred:

Minimum Wages Act, 1948 — Section 3, 4, 5

Citation : (2010) 4 JLJR 172

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Heard counsel for the parties and with their consent these applications are taken up for disposal at the stage of admission.

2. The petitioners in these writ applications have challenged the order dated 15.12.2003 (Annexure-8) issued under the signature of Respondent No. 4 whereby and whereunder the petitioners have been called upon to make payment of the difference of wages to the petitioners' workers on the ground that the workers have not been paid their minimum wages fixed for the below ground workers of the colliery. A further prayer has been made for a direction upon the respondents to dispose of, without further delay, the review application filed by the petitioners on 17.12.2002 in M.W. Case No. 27/1999 before the concerned authority under the Minimum Wages Act and the Regional Labour Commissioner (Central), Patna.

3. As it appears from the rival submissions, the petitioners are engaged in mining operations of stone quarrying and its operation is carried out through workers engaged in the open cast mines. The petitioners' claim is that they have been paying the minimum wages fixed for the class of workers employed by it in the open cast mines but by resorting to an unqualified explanation to the meaning of "open cast mines", the respondent authorities have sought to saddle an additional liability upon the petitioners' establishment to pay a higher amount of wages.

4. Learned Counsel for the petitioners explains that the minimum wages fixed for workers employed in the open cast mines has been laid down in the Minimum Wages Act and the same is being paid to the workers of the petitioners' establishment.

5. Learned Counsel adds that as per the clarification obtained by the Quarry Owners Association from the Director of Mines Safety, it was informed that as per the Mines Act, "Open Cast Working" means a quarry i.e. an excavation where any operation for the purpose of searching for or obtaining materials has been or being carried on, not being a shaft or an excavation which extends below superjacent ground.

Learned Counsel explains further that as per the clarification obtained, the employees of the petitioners' establishment are deemed to be employed in open cast working and they are entitled to their wages only as fixed for such workers under the Minimum Wages Act. The respondents, according to the learned Counsel, have sought to make a distinction creating a class within class by fixing another scale of wages for workers working in the underground mines and those working on the surface.

6. Per contra, stand taken by the respondents is that under the notification issued by the Government of India, Ministry of Labour in exercise of its power conferred u/s 3(1)(b) read with Section 4(1)(iii) and 5(2) of the Minimum Wages Act, an explanation for the purpose of the notification has been issued in which the categories of workers employed below ground and above ground have been mentioned and it is only in accordance with the aforesaid notification that the minimum wages has been fixed for the workers employed in the quarries including that of the petitioners' establishment.

7. Learned Counsel for the petitioners submits that this issue, as raised by the respondents, was earlier decided by the Orissa High Court in the case of Essel Mining and Industries Ltd. and Anr. v. Union of India and Ors. and by the judgement passed by the Division Bench of the Court, the explanation as contained in Clause(iii) of the notification has been quashed. However, the judgement of the Division Bench of the Orissa High Court has been set aside by the Supreme Court by its order dated 9th August, 2005 passed in C.A. No. 5920 of 1999 and the matter has again been remanded back to the Orissa High Court to re-hear the writ petition and to dispose of the same by a reasoned order. After the remand, the matter is yet to be disposed of by the Orissa High Court. The petitioners would therefore prefer to withdraw this writ application this writ application at this stage with liberty to file afresh, if need be, after the disposal of the writ application pending before the Orissa High Court.

8. Considering the above submissions, petitioners are allowed to withdraw these writ applications with a liberty to file afresh, after disposal of the writ application pending before the Orissa High Court. These applications are accordingly disposed of.