
(2007) 04 AHC CK 0315
In the Allahabad High Court

Jangipur Sahkari Kraya Vikraya Samiti Ltd.	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 26-04-2007

Acts Referred:

Payment of Wages Act, 1936 — Section 15

Citation : (2007) 5 ADJ 649 : (2007) 7 AWC 7542 : (2007) 114 FLR 175 :
(2008) 1 LLJ 418

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard the learned Counsel for the petitioner and the learned Standing counsel representing the respondents. The petitioner is a Society registered under the U.P. Co-operative Societies Act, 1965. Proceedings u/s 15 of the Payment of Wages Act, 1936, were initiated by the respondent No. 2 against the petitioner for the alleged illegal deduction of the wages. The Prescribed Authority passed an order to proceed exparte and there after passed an order u/s 15 of the Act. 2. Being aggrieved by the said orders, the petitioner has filed the present writ petition. The short submission of the learned Counsel for the petitioner is, that the Payment of Wages Act, is not applicable upon the petitioner's society, inasmuch as, it is neither a factory nor a railway or an establishment and therefore, the petitioners are not covered under the provisions of the Payment of Wages Act. Consequently, the authority had no jurisdiction to proceed against the petitioner. Sub-section (4) of Section 1 and sub-section (5) of Section 1 of the Act reads as under:

1.(4) It applies in the first instance to the payment of wages to persons employed in any (factory, to persons) employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration, (and to persons employed in an industrial or other establishment specified in Sub-clauses

(a) to (g) of Clause (ii) of Section 2.

1.(5) The State Government may, after giving three months' notice of its intention of so doing, by notification in the Official Gazette, extend the provisions of (this Act) or any them of the payment of wages to any class of persons employed in (any establishment or class of establishments specified by the Central Government or a State Government under Sub-clause (h) of Clause (ii) of Section 2:

Provided that in relation to any such establishment owned by the Central Government, no such notification shall be issued except with the concurrence of that Government.

3. From a perusal of the aforesaid, the Act applies to person employed in a factory, or in a railway or in such other establishments contemplated u/s 2(H) of the Act, namely:

2.(ii) "Industrial or other establishment" means any-

(a) tramway service, or motor transport service engaged in carrying passengers or goods or both by road, for hire or reward;

(aa) air transport service other than such service belonging to, or exclusively employed in the military, naval or air forcer of the union or the Civil Aviation Department of the Government of India;

(b) dock, wharf or jetty;

(c) inland vessel, mechanically propelled; ,

(d) mine, quarry or oilfield;

(e) plantation;

(j) workshop or other establishments in which articles are produced, adapted or" manufactured, with a view to their use, transport or sale;

(g) establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations reconnected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other forms of power is being carried on.

4. The aforesaid provisions includes tramway service, or motor transport service engaged in carrying passengers or goods or both by road, for hire or reward, air transport service other than such service belonging to, or exclusively employed in the military, naval or air forces of the union or the Civil Aviation Department of the Government of India, dock, wharf or jetty, inland vessel, mechanically propelled, mine, quarry or oilfield, plantation, workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use transport or sale, or such establishment which relates to the constructions,

development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or such other establishments or class of establishment which the Central Government or a State Government notifies in the official Gazette.

4.1. From the aforesaid provision, it is clear that the petitioner's society is not covered under the definition of establishment nor could it be called an industrial establishment. Further, nothing has been brought on record by the respondents to show that any notification has been issued including a society as an establishment covered under the Payment of Wages Act.

5. In *Registrar, Co-operative Societies, Allahabad v. State of U.P. and Ors.* 1997 (75) FLR 356 this Court held that a Co-operative Society is not covered under the Payment of Wages Act. I am in complete agreement with the aforesaid judgment.

6. In view of the aforesaid, this Court holds that the Payment of Wages Act is not applicable upon a Cooperative Society formed under the Co-operative Societies Registration Act, 1965. Consequently, the entire proceedings under the Payment of Wages Act, was ex facie, illegal and without jurisdiction. Consequently, the impugned order cannot be sustained and is quashed. The writ petition is allowed.