

(1983) 05 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1571 of 1982

Metal and Engineering Workers Union (AITUC), Bhilai	APPELLANT
Vs	
Himmat Steel Foundry Ltd., Durg and others	RESPONDENT

Date of Decision : 06-05-1983

Acts Referred:

Madhya Pradesh Industrial Relations Act, 1960 — Section 33

Citation : (1984) JLJ 94 : (1984) MPLJ 134

Hon'ble Judges : G.L. Oza, J

Bench : Single Bench

Advocate : P.S. Nair, for the Appellant; H.N. Vyas with O.P. Namdeo for Respondent No. 1 and P.D. Tiwari, for the Respondent

Final Decision : Allowed

Judgement

G.L. Oza, J.

This petition has been filed by the petitioner which claims to be a registered Trade Union of employees in Engineering Industry for the district of Durg. It claims to have the backing of vast majority of employees of respondent No. 1 and it is alleged that majority of the workers in this factory are members of the petitioner Union.

It is alleged that the Central Government appointed the Central Wage Board for engineering industries. Hence, the said Board submitted its recommendations which were accepted by the Government of India and the recommendations were brought into force from 1-1-1969 and were to be implemented 100 per cent by 31-12-1972/1-1-1973.

According to the petitioner, the management of the respondent No. 1 failed to pay wages according to the recommendations of the Wage Board and a demand was raised by the petitioner Union and the State Government referred the dispute of payment of wages in accordance with the Wage Board recommendations to the Industrial Court, Madhya Pradesh, Indore. But the

Industrial Court rejected the petitioner's demand.

The petitioner, therefore, filed a miscellaneous petition in this Court which was M.P. No. 430/77 and this Court, by its order, dated 13-7-1978 remanded the case to the Industrial Court. It was observed in this judgment while remanding the case that the Wage Board's recommendations were in respect of minimum wages payable to the workman employed in the engineering industry. On remand, the Industrial Court again rejected the claim of the petitioner and the petitioner, therefore, filed another petition which was M.P. No. 106/80 and this Court, by its order dated 8-4-1980, held that grant of additional D.A. in accordance with para 7.99 of the Wage Board recommendations is well founded. The High Court, therefore, quashed the award of the Industrial Court and directed that the workman should be entitled to increase in wages in accordance with the Wage Board recommendations for employees in category-C including the benefit of Additional D.A. given in para 7.99 of the Recommendations.

The petitioner as well as respondent No. 1 filed petitions for special leave before Hon'ble the Supreme Court of India and according to the petitioner, their Lordships dismissed the SLP filed by respondent No. 1 whereas the petition filed by the petitioner was disposed of with the modification that the award was made effective from 1-1-1977 instead of 13-7-1978.

It is alleged by the petitioner that in spite of the fact that this Court passed the award which was affirmed by the Hon'ble the Supreme Court of India with the further modification about the date, the respondent management refused to make the payment of wages including V.D.A. in accordance with the Wage Board recommendations and it is alleged, therefore, that the petitioner had no choice but to file claim under the Payment of Wages Act before the Payment of Wages Authority, Durg (Labour Court, Durg) on the basis of the authority given to the petitioner Union by the Workmen and in this manner, claims in respect of 470 workers were pending before the Payment of Wages Authority (Labour Court, Durg).

It is alleged that during the pendency of these proceedings, the management of respondent No. 1 were trying to interfere with the Trade Union activities of the petitioner and were attempting to set up a rival Union sponsored by them. It is also alleged that the management assured the workmen that they will be paid their dues if they leave the petitioner Union and associate themselves with the rival Union set up by the management and this Union was formed in the name of Durg Jila Engineering Mazdoor Sabha which is arrayed as respondent No. 2 in this petition. This Union was registered on 22-2-1982.

According to the petitioner, with a view to defeat the claim of the workers which was being fought at all levels by the petitioner, the management entered into an agreement with this rival Union, Durg Jila Engineering Mazdoor Sabha on 7-10-1982.

According to the petitioner, when they learnt about some kind of agreement

being entered into they submitted an objection to the Managing Director of respondent No. 1 with a copy to the Registrar of Trade Unions on 9-9-1982 and wrote another letter on 19-10-1982 objecting to the alleged agreement. It is alleged that the petitioner also sent telegram on 31-10-1982 objecting to the registration of the alleged agreement.

According to the petitioner, u/s 33 of the M.P. Industrial Relations Act, the Registrar was bound to make an enquiry before registering the agreement and in spite of the objection, the agreement was registered without holding any enquiry, on 4-11-1982. It is alleged that notice of change was given on 22-7-1982 and the agreement was registered on 7-10-1982.

On 19-11-1982, respondent No. 1 moved an application before the Authority under Payment of Wages Act seeking to amend their pleading and a plea was raised that these matters before the Payment of Wages Authority are liable to be dismissed on the ground that they have implemented the settlement on 1-9-1982 and paid higher wages to the workers. According to petitioner, the Payment of Wages Authority accepted this objection and framed an additional issue regarding the maintainability of these proceedings. According to the petitioner, the Wage Board had recommended that the price index for the year 1949 should be treated as a base year for Variable Dearness Allowance (V.D.A.) but in the agreement, dated 7-10-1982, the base year is shown to be 1960. The pay scale given in the alleged agreement is also below the basic wages recommended by the Wage Board. Whereas in the Wage Board recommendations there were categories A to F but the agreement does not mention categories E and F.

It is alleged by the petitioner that on the ground of delay in getting wages as per the recommendations of the Wage Board from the year 1973 onwards and because of the litigation at different levels, the workers were getting exasperated and disgusted and taking advantage of this situation, the management respondent No. 1 pressurised the workers to join the rival union and some of them succumbed to it. It is alleged by the petitioner that when this was known, about 80 workers filed fresh affidavits before the Payment of Wages Authority stating that they are not members of the said Union and they also made a grievance that the management had been pressurising them to sign certain papers. The petitioner, therefore, has challenged the validity of the agreement dated 7-10-1982 entered into between the respondent No. 1 and respondent No. 2, on the grounds:

(a) that the wages provided in the agreement were less than the wages recommended by the Wage Board which was the minimum wage and any agreement bringing down the level of wages to something less than the minimum wage, would be contrary to law and could not be enforced and, therefore, the Registrar, in view of clause (c) of section 33, should not have registered the agreement.

(b) that the agreement is in violation of Article 23 of the Constitution and, therefore also, it could not have been registered.

(c) It is also contended that as the agreement was not arrived at within 7 days from the service of notice, which is 22-7-1982, and was also not within two months, from the completion of conciliation proceedings, the Registrar ought not to have registered this agreement as it is contrary to law.

(d) It is also contended that as a protest had already been filed by the petitioner, the Registrar ought to have given an opportunity of hearing to the petitioner before registering the agreement and it is contended that the Registrar ought to have held some enquiry in order to satisfy himself that the agreement was not brought about by undue influence, fraud or coercion.

(e) It is also contended that the clause providing for withdrawal of various proceedings pending before the various Tribunals is also contrary to law and the agreement is also invalid because it contravenes section 23 of the Contract Act,

(f) It is also contended that the Registrar ought to have noticed that the agreement was only meant to defeat the judgment of this Court as modified by the Hon"ble the Supreme Court of India and the judgment of the Court modified by Hon"ble the Supreme Court of India will be clearly an award in accordance with law and any agreement to negative such an award ought to have been struck down as an agreement contrary to law.

The petitioner, therefore, has filed the present petition and seeks a direction that the agreement dated 7-10-1982 and its registration, dated 4-11-1982 be quashed and further a direction be issued not to give effect to this agreement.

On behalf of respondent No. 1, it is contended that although the petitioner has been pursuing litigation in respect of Wage Board recommendations but because of the activities of the leaders of the petitioner Union the workers were not satisfied and, therefore, they decided to form another Union. It is denied that this Union was sponsored by the management itself. On the contrary, it was contended that this Union was formed by the workers themselves and it represents substantial majority of the workers in the industry and in that view of the matter and in order to give expeditious remedy to the workers, the respondent management chose to negotiate with the Union, respondent No.2 and arrive at a settlement which was given the shape of an agreement dated 7-10-1982 and was registered by the Registrar. It was contended that u/s 33, it is not necessary for the Registrar to give a hearing to the petitioner and therefore, it was registered and because it was in accordance with law there could be no difficulty in registering the agreement. It is contended that the certificate of registration issued by the Registrar shows that it has been validly registered and a presumption arises that what was necessary u/s 33 of the M.P. Industrial Relations Act was done.

Learned Counsel for the petitioner contended that an agreement which brings

down the wages, lower than the minimum wage, is apparently contrary to law as what the Wage Board recommended was a minimum wage which should be paid to the workers in the Engineering industry and it was because of this that ultimately after a prolonged litigation, the petitioner secured a decision from this Court which was modified only with respect to the date of implementation, by their Lordships of the Supreme Court and any agreement which attempted to negative this award by this Court or which attempted to lower down the wages of workers below the minimum wage is contrary to law and, therefore, the Registrar ought not to have registered the agreement, Learned Counsel placed reliance on State of Bihar Vs. Kripa Shankar Jaiswal, , Herbertsons Ltd. v. The Workmen AIR 1977 SC 322, The U.P. State Electricity Board v. Harishanker Jain AIR 1979 SC 65 , Tata Engineering and Locomotive Company Limited Vs. Their Workmen, , and People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, .

It was contended that u/s 33, the Registrar was bound to hold an enquiry to satisfy himself that the agreement registered is not contrary to law and is not brought about by fraud, coercion or undue influence. The order passed by the Registrar, therefore, ought to be a speaking order and it must demonstrate that the Registrar did apply his mind to the facts leading to above inference. It is contended that there is no order parsed by the Registrar and in spite of the fact that the Registrar has been joined as respondent in this petition, he had chosen not even to appear and file a return, apparently because he had nothing to say as he could not show that he did apply his mind. It is contended that the Registrar registered the agreement merely in a mechanical manner without applying his mind to it and therefore, this registration could not be maintained and deserves to be quashed.

Learned Counsel for respondent No. 1, on the other hand, contended that the agreement which was arrived at between respondent No. 1 and respondent No. 2 could not be said to be unreasonable and as respondent No. 2, Union, represented the majority of the workers and had accepted the settlement brought about by registration, the registration could not be quashed as it could not be said that it is not reasonable. Learned Counsel placed reliance on decisions reported in Shree Yamuna Mills Co. Ltd. Vs. Majoor Mahajan Mandal and Others, . It was contended that the enquiry contemplated u/s 33 only pertains to two aspects; one, that it is not contrary to law, and the other, that it is not brought about by force, undue influence or fraud. Both the parties to the agreement i.e. respondent No. 1 and respondent No. 2 accepted the agreement and they accept it even today and it is not contended by any one of the two parties to the agreement that it was brought about by force, fraud or undue influence and, therefore, when the Registrar registered it, it is clear that he did apply his mind to this aspect of the matter.

As regards the legality of the agreement, it was contended that it could not be said that this agreement is in any manner in contravention of any provision of

the M.P. Industrial Relations Act and that is what was required by the Registrar to be noticed before the agreement was registered. It is no doubt true that the Learned Counsel for the respondent conceded that the Registrar has not filed a return and has not appeared in this Court but the certificate issued by the Registrar of registration of the agreement leads to a presumption that what was necessary u/s 33 was done and there is no material on the basis of which it could be said that the Registrar registered the agreement mechanically without application of mind, it was also contended that there is nothing in section 33 to show that any reasoned order before registering an agreement is contemplated but it was also contended that even if it is necessary, it will have to be presumed that it may be in the file as a certificate of registration has been issued. It was contended by the Learned Counsel that in fact what was given to the workmen under the agreement is nothing less than what they would have been entitled under the award but something more. However, the Learned Counsel for the respondent frankly conceded that if at all there was any deficiency, it was in regard to the Variable Dearness Allowance (V.D.A.) and in lieu of that, according to the Learned Counsel, an amount has been kept in reserve so that the loss so incurred will be compensated and that payment has been withheld only because of this litigation pending in this Court.

18A. It could not be disputed that what the Wage Board recommended was the minimum wage and it is not in dispute now that the wage of a workman in the respondent No. 1's industry fixed in accordance with the recommendations of the Wage Board will be minimum wage which, under the law, has to be paid. It is not necessary for me to go into the question about what is minimum wage but now, as it is well settled, the minimum wage is the basic requirement which has to be paid and there is no option left with the employer not to pay it. So far as the present case is concerned, in earlier petitions it has already been seen that the recommendations of the Board only provided for payment of minimum wages and, therefore, the recommendations about wages, dearness allowance and V.D.A. as have been recommended by the Board, all will fall within the ambit of minimum wage which it was considered was minimum which ought to be paid to a worker in the concerned industry.

It is also clear from the judgment of this Court in Miscellaneous Petition No. 106/80 that the award of the Industrial Court was modified and it was directed that the recommendations of the Wage Board have to be implemented with regard to wages, dearness allowance and variable dearness allowance. Their Lordships of the Supreme Court, while modifying the judgment of this Court, made it effective from January 1, 1977. It, therefore, is clear that on the basis of the recommendations of the Wage Board, on a dispute being referred to the Industrial Court, an award was passed and that award ultimately was modified by this Court and has been further modified by their Lordships of the Supreme Court about the date of its implementation by its order, dated 9-3-1981. Statements have been filed by both the sides showing how the wage has been fixed under the agreement and how it should have been fixed under the Wage

Board recommendations in accordance with the award so modified by this Court and the Supreme Court and having gone through these respective statements, Learned Counsel for parties had to agree that virtually what has been paid under the settlement is not exactly what the workers will be entitled to under the Wage Board recommendations but something less. As regards the variable dearness allowance, the Learned Counsel for the respondent No. 1 frankly conceded that they have not complied with or not acted on the recommendations of the Wage Board. It is, therefore, plain that what has been given under the agreement to the workers is not what they were entitled to under the award passed by this Court and modified by the Supreme Court which was on the basis of the recommendations of the Wage Board which only fixed the minimum wages of the workers in this industry. It was for this reason that the Learned Counsel for the respondent No. 1 contended that if the agreement is fair, it should be accepted and merely because there is a little difference here and there, it could not be struck down and for this proposition, the Learned Counsel placed reliance on the decision of their Lordships of the Supreme Court reported in *Herbertsons Ltd. v. The Workmen*. In this judgment, their Lordships observed:

Besides, the settlement has to be considered in the light of the conditions that were in force at the time of the reference. It will not be correct to judge the settlement merely in the light of the award which was pending appeal before this Court. So far as the parties are concerned there will always be uncertainty with regard to the result of the litigation in a Court proceeding. When, therefore, negotiations take place which have to be encouraged, particularly between labour and employer in the interest of general peace and well-being, there is always give and take. Having regard to the nature of the dispute, which was raised as back as 1968, the very fact of the existence of a litigation with regard to the same matter which was bound to take some time must have influenced both the parties to come to some settlement. The settlement has to be taken as a package deal and when labour has gained in the matter of wages and if there is some reduction in the matter of dearness allowance so far as the award is concerned, it cannot be said that the settlement as a whole is unfair and unjust.

It was on the basis of these observations it was seriously contended by the Learned Counsel for respondent No. 1 that as long litigation was pending, ultimately the workers having been exhausted, struck a settlement and if in terms of the observations made by their Lordships in this case, the settlement is fair, it could not be struck down. Reliance was also placed on a decision of their Lordships of the Supreme Court reported in *M/s Tata Engineering and Locomotive Company Ltd. v. Their Workmen*. In this judgment, relying on *Herbertsons Ltd.*'s case, referred to earlier, it was observed:

We are clearly of the opinion that the approach adopted by the Tribunal in dealing with the matter was erroneous. If the settlement had been arrived at by a vast majority of the concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not

liable to be ignored while deciding the reference merely because a small number of workers (in this case 71, i.e. 11.18 per cent) Were not parties to it or refused to accept it, or because the Tribunal was of the opinion that the workers deserved marginally higher emoluments than they themselves thought they did. A settlement cannot be weighed in any golden scales and the question whether it is just and fair has to be answered on the basis of principles different from those which come into play when an industrial dispute is under adjudication.

These observations of their Lordships no doubt lay down that in cases of such disputes where on a fair assessment it appears that the agreement is just and fair, it may not be struck down as it has been observed that in matters where parties want to decide or settle the dispute, there is always a little bargain, and if on the whole, according to the test applied by their Lordships, the settlement is just and fair, it has to be accepted. But it may be noticed that these judgments do not refer to a settlement or an agreement where there is an agreement to pay something less than the minimum wage. The question of minimum wage has its own significance and it involves a fundamental right under Article 23 as has been laid down by their Lordships of the Supreme Court in People's Union for Democratic Rights v. Union of India. It is observed:

It is Article 23 with which we are concerned and that Article is clearly designed to protect the individual not only against the State but also against other private citizens. Article 23 is not limited in its application against the State but it prohibits "traffic in human beings and begar and other similar forms of forced labour" practised by anyone else. The sweep of Article 23 is wide and unlimited and it strikes at "traffic in human beings and begar and other similar forms of forced labour" wherever they are found. The reason for enacting this provision in the chapter on fundamental rights is to be found in the socio-economic condition of the people at the time when the Constitution came to be enacted. The Constitution makers, when they set out to frame the Constitution, found that they had the enormous task before them of changing the socioeconomic structure of the country and bringing about socio-economic re-generation with a view to reaching social and economic justice to the common man. Large masses of people, bled white by well-nigh two centuries of foreign rule, were living in abject poverty and destitution, with ignorance and illiteracy accentuating their helplessness and despair.

Their Lordships thereafter considered whether payment of wages less than minimum wage will amount to forced labour which will infringe the Article 23. Their Lordships considered this question at length and held :

Now the next question that arises for consideration is whether there is any breach of Article 23 when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it. It is obvious that accordingly no one would willingly supply labour or service 50 another for less than the minimum wage, when he knows that under the law he is entitled to get minimum wage for the labour or service provided by him it may therefore be

legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive. What Article 23 prohibits is "forced labour" that is labour or service which a person is forced to provide and "force" which would make such labour or service "forced labour" may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as "force" and if labour or service is compelled as a result of such "force", it would be "forced labour". Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where (sic) grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly "forced labour". There is no reason why the word "forced" should be read in a narrow and restricted manner so as to be confined only to physical or legal "force" particularly when the national charter, its fundamental document has promised to build a new socialist republic where there will be socio-economic justice for all and everyone shall have the right to work, to education and to adequate means of livelihood. The Constitution makers have given us one of the most remarkable documents in history for ushering in a new socio-economic order and the Constitution which they have forged for us has a social purpose and an economic mission and therefore every word or phrase in the Constitution must be interpreted in a manner which would advance the socio-economic objective of the Constitution it is not unoften that in a capitalist society economic circumstances exert much greater pressure on an individual in driving him to a particular course of action than physical compulsion or force of legislative provision. The word "force" must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage. Of course, if a person provides labour or service to another against receipt of the minimum wage it would not be possible to say that the labour or service provided by him is "forced labour" because he sets what he is entitled under law to receive. No inference can reasonably be

drawn in such a case that he is forced to provide labour or service for the simple reason that he would be providing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion. We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23. Such a person would be entitled to come to the Court for enforcement of his fundamental right under Article 23 by asking the Court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be "forced labour" and the breach of Article 23 is remedied. It is therefore clear that when the petitioners alleged that minimum wage was not paid to the workmen employed by the contractors, the complaint was really in effect and substance a complaint against violation of the fundamental right of the workmen under Article 23.

It, therefore, is clear that any agreement or settlement which prescribes for payment of wages less than the minimum wages could not be held to be an agreement in accordance with law.

In *Sanjit Roy v. State of Rajasthan* 1983 L & I C 312, this question has been examined by their Lordships of the Supreme Court and it was held that payment of wages less than the minimum wage amounts to violation of Article 23.

Section 33 of the M.P. Industrial Relations Act provides for registration of an agreement and clause (c) of this provision reads:

33. Agreement.--(1).....

(2) On receipt of the memorandum of agreement signed by the parties under sub-section (1), the Registrar shall register the agreement if it is arrived at --

(a).....

(b) omitted

(c) within two months from the completion of conciliation proceedings:

Provided that the Registrar shall not register an agreement which on enquiry he is satisfied is in contravention of the provisions of this Act or was the result of mistake, misrepresentation, fraud, undue influence, coercion or threat.

It provides that the Registrar shall not register an agreement which is in contravention of the provisions of this Act. It is not in dispute that this agreement supersedes or overrides an award passed by the Industrial Court as modified by the High Court and their Lordships of the Supreme Court and this award has been passed under the provisions of this Act and, therefore, any agreement which is in contravention of the award apparently will be in contravention of this Act. Apart from it, as has been observed earlier, this agreement violates Article 23 as has been held by their Lordships of the Supreme Court as the agreement provides for payment of wages less than the minimum

wage. It is, therefore, clear that this agreement not being in accordance with law, ought not to have been registered by the Registrar.

Section 33 quoted above and the proviso to clause (c) to this section clearly provides that the Registrar before registering an agreement has to apply his mind and also hold an enquiry as the words used are "the Registrar shall not register an agreement which on enquiry he is satisfied is in contravention of the provisions of this Act". The order passed by the Registrar is not before us nor it has been filed and in spite of the fact that the Registrar has been joined as a respondent, he has not chosen to appear in this Court or to file a return or even to file an order which shows that the Registrar has done some kind of enquiry. Arguments, no doubt, have been advanced by the Learned Counsel for respondent 1 and respondent No. 2 and they have also not been able to produce any order showing any application of mind by the Registrar, apart from any enquiry as is contemplated in the proviso to clause (c) of section 33. It is, therefore, plain that the Registrar proceeded to register the agreement without either holding any enquiry or without the application of mind. It could not be disputed that registering of an agreement of this kind involves rights of workmen employed in an industry and, therefore, it is expected that the Registrar while exercising jurisdiction u/s 33, will apply his mind to the matters in question, especially when the Jaw itself required an enquiry to be held with regard to the matters enumerated in the proviso to clause (c) of section 33. On this ground also, this registration certificate issued by the Registrar has to be quashed.

In the light of the discussion above, therefore, the petition is allowed. The agreement, dated 7-10-1982, which has been registered by the Registrar by issuance of a certificate, dated 4-11-1982, is quashed. The petitioner shall also be entitled to costs of this petition. Counsel's fee Rs. 250, if certified. The security amount deposited by the petitioner shall be refunded to the petitioner.