
(2012) 01 MAD CK 0120
In the Madras High Court
Case No : Writ Petition No. 587 of 2007

Mohandas

APPELLANT

Vs

Authority under the Minimum Wages Act, 1948-2/Deputy
Commissioner of Labour-2 D.M.S. Compound Chennai-6,
Deputy Inspector of Labour Thiruvallur and Madras Metro
General Workers Union 16, Stringer Street, Chennai-600108

RESPONDENT

Date of Decision : 02-01-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 23

Minimum Wages Act, 1948 — Section 20, 20(3), 3(2), 4(1)

Citation : (2012) 133 FLR 262 : (2012) 3 LLJ 390 : (2012) LLR 630

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M.R. Raghavan, for the Appellant; Anna Mathew for R3 and Mr. M. Digvijayapandian for R1 and R2, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner is a Transport company operating transport service in the State of Tamil Nadu. The second respondent,

who is the notified Inspector under the Minimum Wages Act, 1948 has found that the workmen were not receiving minimum wages in terms of the

notification issued by the State Government in G.O.Ms.No.47, Labour Employment dated 01.08.2003 and filed a complaint before the first

respondent, who is the authority constituted u/s 20 of the Minimum Wages Act, 1948 for the unpaid minimum wages for the period from

01.10.2004 to 31.03.2005. They also demanded the unpaid minimum wages together with penalty that could be levied in terms of Section 20(3)(i)

of the Minimum Wages Act, 1948. The first respondent registered the said

application as Minimum Wage Application No.51 of 2005 and issued notice to the petitioner/Management.

2. The petitioner/Management filed a counter statement dated 30.09.2005. In the counter statement, the contention raised by the petitioner was

that the workmen are paid more than Rupees six thousand (Rs.6,000/-) per month, which was above the minimum wages fixed by the State

Government by way of various allowances and apart from the Motor Transport, they are also having other establishments. Therefore, the

employees, for whom the minimum wages application filed are only entitled to get amounts as per the notification issued under Shops and

Establishment Act, 1947 and not entitled for the minimum wages notification issued in terms of the Motor Transport establishment.

3. The authority, after examining the documents filed by the Deputy Inspector of Labour, viz., R2, which was marked as Exhibits P.1 to P.7 found

that the management had not paid the actual minimum wages. Therefore, he worked out the unpaid wages in respect of the 44 employees as

Rs.3,25,872/- for the period from 01.10.2004 to 31.03.2005. The authority also in exercise of its power levied penalty of 10 times of unpaid

wages, which amount worked out to Rs.32,58,720/-. The authority directed that since it is in the nature of penalty, it should be credited to the

Tamil Nadu Labour Welfare Fund Board vide order dated 06.09.2006.

4. The writ petition, filed by the petitioner company was admitted on 05.01.2007. Pending the writ petition, this Court directed the petitioner to

deposit the unpaid minimum wages of Rs.3,25,872/- and subsequently, when the matter came up on 11.07.2007, on finding that the said condition

was complied with, the stay was made absolute.

5. The workmen, who are represented by Madras Metro General Workers" Union, Chennai-108 filed a impleading petition in M.P.No.2 of 2007

and also application to withdraw the amount lying in deposit. The impleading application was ordered on 11.07.2007. Subsequently, on

24.10.2007, this Court permitted the workmen to withdraw the amount. The main writ petition was directed to be posted for final disposal.

6. Mr.M.R.Raghavan, learned counsel for the petitioner/Management strenuously contended that if the employer pays the amount what was fixed

under the Minimum Wages Act, then the question of unpaid minimum wages will

not arise and the authority u/s 20 of the Minimum Wages Act is incompetent to go to the said matter. What is relevant is total pay packet and not the exact component that has been ordered by the Government under the Minimum Wages Notification. The learned counsel has alternatively argued that the levy of 10 times penalty was without any reason, therefore, this Court should set aside the impugned order. In the event of not agreeing with the petitioner on the first submission, in this context, the learned counsel placed reliance upon the judgment of this Court in the case of CG Igarashi Motors Ltd. Vs. Deputy Commissioner of Labour-II and Chennai Yettrumathi Valaga Uzhiyargal Podhu Thozhilalar Sangam, In that case, a learned Judge of this Court has held in paragraph 6 as follows:-

6. Therefore, considering the facts and circumstances of the case, I am of the considered opinion that the impugned order suffers from legal as well as factual infirmities as the first respondent has failed to take into consideration the relevant materials placed on record and the contentions raised by the petitioner. I, therefore, consider it appropriate to set aside the impugned order and remand the matter back to the authority concerned for fresh consideration in the light of the discussion made above. The concerned authority is directed to consider the matter afresh and after giving opportunity to both parties pass appropriate orders within three months from the date of receipt of copy of this order.

He also placed reliance upon another judgment of the learned Judge of this Court in the case of Management of Bailey Hydropower (Private) Ltd.,

(represented by its General Manager-Operations), Sriperumbudur Vs. (1) Deputy Commissioner of Labour -II (Authority under the Minimum

Wages Act), Chennai (2) Chennai Yettrumathi Valaga Uzhiyargal Matrum Pothu Thozhilalar Sangam, Chennai reported in 2009 Labour Law

Notes Vol 1 part 3 814, wherein, a learned Judge on a matter of fact found that the amounts paid by the employer were not more than the

minimum wages fixed by the State Government. Therefore, the learned Judge held that when the employer pays more than the amount by way of

various allowances under various heads, and if the actual minimum wage was more than the amount paid, it cannot be held that the employer has to

pay further amounts towards minimum wages. But, at the same time, it was held

that the paid wages should satisfy the requirements and fall within the meaning of Section 4(1) of Minimum Wages Act. In paragraph 67, this Court held as follows:-

67. Minimum Wages Act is a beneficial piece of social legislation which protects the day-to-day living conditions of the workers employed at the lowest level of wages in the sweated labour. Notifications seeks to take care of the legitimate needs of the workers. Dearness allowance is primarily intended as protection of persons whose salaries are at the sustenance level to protect them against the adverse effects on the rise in prices. The meaningful interpretation of the provisions of MW Act and the notifications has to be adopted. First respondent has rightly held that other allowances"" is not the component of minimum wages fixed u/s 4(1) of M.W.Act and that writ petitioner management is liable to pay the arrears of Rs.37,01,663.61.

7. In the very same judgment, on the question of penalty, the learned Judge held that after referring to the Supreme Court judgment in the case of Prerna Sahygo Vs. Authority under Minimum Wages, (2001) 9 SCC 247 held as follows:-

77. Following the decision of the Supreme Court and other decisions, in the present case, second respondent-workmen shall get as compensation, an amount equal to the arrears amount of wages awarded to them Rs.37,01,663.61 i.e., the workmen would be entitled to the difference between wages actually paid and those payable to them under Minimum Wages Act. They would also be entitled to get compensation amount of Rs.37,01,663.61, an amount of wages awarded to them.

8. The above decisions do not support the petitioner's case. Admittedly, the first respondent authority has recorded that the petitioner has neither filed any document nor examined any witness on their side to prove their contention. There was also a finding recorded that there was no cross examination by the petitioner/Management on the Inspector, who was examined in support of the claim. Therefore, this Court sitting under jurisdiction under Article 226 of the Constitution of India feels it fit to refuse to interfere with the finding of the fact recorded by the authority viz., that the actual minimum wage as notified for the employer under the Motor Transport was not paid for 44 workmen. It was also recorded that the

workers are covered by the said notification and not under the notification for the Shop and Establishment Act, 1947. The writ petition is liable to

be rejected on yet another ground viz., that the 44 workmen for whose benefit, the amounts are computed were not parties either individually or in

a representative capacity. Therefore, the writ petition is liable to be rejected on grounds of non joinder of parties. In identical circumstances, this

Court in *Muruga Home Industries Vs. Government of Tamil Nadu and Another* reported in 1996 (1) Lab LJ 598 in paragraphs 3, 4 and 29

observed as follows:-

The learned Additional Government Pleader also has taken the same point that the writ petitions are not maintainable for non-joinder of necessary

parties, viz., as the employee or their unions and as such the writ petitions ought to be dismissed in limine as not maintainable. In support of the

above contentions, Mr.Chandru, learned counsel appearing for the respondents Nos.2 and 4, cited the ruling of *Prabodh Verma and Others Vs.*

State of Uttar Pradesh and Others, , at page 180 wherein it is observed as follows:-

Before we address ourselves to this question, we would like to point out that the writ petition filed by the Sangh suffered two serious, though not

incurable, defects. The first defect was that of non joinder of necessary parties. The only respondents to the Sangh's petition were the State of

Uttar Pradesh and its concerned Officers. Those who were vitally concerned, namely, the reserve pool teachers, were not made parties - not even

by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as

respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the

Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being

before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have

proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ

petition, or atleast some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have

dismissed that petition for non-joinder of necessary parties...

To summarize our conclusions:

(1) A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them before it as respondents in a representative capacity if their number is too large to join them as respondent individually and if the petitioners refused to so join them, the High Court ought to dismiss the petition for nonjoinder of necessary parties.

4. He also referred to a Division Bench ruling of this Court in T.R. Sukumaran Vs. State of Tamil Nadu (1978) 53 FJR 301, wherein it is observed as follows (at page 305):

We may also point out that the writ petitions are liable to be dismissed on a very narrow ground as well. The petitioners have not impleaded the respective employees or the representatives of the employees as parties to the writ petitions. In the event of the petitioners succeeding in the writ petitions, the persons who will be really affected will be the employees and they have not been impleaded as parties and in their absence, no relief can be given to the petitioners herein we are referring to this as an additional ground for dismissing the writ petitions.

.....

29. With regard to preliminary objections taken by the respondents that the petitioners have not impleaded the necessary parties and therefore, the writ petitions are liable to be dismissed in limine, there is force in the said contention in view of the Supreme Court ruling in Prabhodh Verma Vs.

State of Uttar Pradesh (supra) referred to above, and the judgment of the Division Bench of this High Court in T.R.Sukumaran Vs. State of Tamil

Nadu (supra). The ruling cited by learned counsel for the petitioner in State of H.P., Vs. Kailash Chand Mahajan (supra), is not applicable to the

facts and circumstances of the case. On this ground also, the writ petitions are liable to be dismissed.

In any event, since the workmen represented by the Union have got impleaded as party respondent, this Court do not want to reject the writ

petition on a technical ground, but it is rejected on the basis of the first submission.

9. On the question of penalty, there is something in favour of the petitioner. The Supreme Court vide judgment in the case of Prerna Sahygo Vs.

Authority under Minimum Wages, (2001) 9 SCC 247 , in respect of penalty imposed u/s 20(3) of the Minimum Wages Act in paragraph 6 has

held as follows:-

6. We do not agree that no interference with the award of the authority was called for. It was called for in the matter of the compensation

awarded. Rather than remitting the matter to the High Court, we have heard learned counsel. We are satisfied that the award of compensation is

exorbitant. We thin, in the circumstances, that the amount of the compensation should be equivalent to the amount of the wages. In other words,

each of the workers shall get as compensation an amount equal to the amount of wages awarded to him. The order of the Authority dated

30.12.1997 shall stand modified to this extent only. The appeal is allowed to this extent. No order as to costs.

10. In normal circumstances, when the Act gives power to the authority to levy penalty and also gives the discretion to levy penalty depending

upon the fact situation and the authority exercise statutory power, it may not be proper for this Court to interfere with the quantum of penalty.

Nonpayment of wages notified under the Minimum Wages Act will result in forced labour prohibited under Article 23 of the Constitution of India.

In People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, as well as in Sanjit Roy Vs. State of Rajasthan, the

Supreme Court emphasised the High Courts and Subordinate Courts to be sensitive in the matters of nonpayment of Minimum Wages Act and

also held that the Courts should not treat penalties as trivial and appropriate penalties must be imposed on the employer for default in payment of

minimum wages.

11. In any event, in the order impugned in the writ petition, the authority had not given any reason for levying the maximum penalty because the

penalty ranges from amount equivalent to the non payment of Minimum Wages and go up to the maximum of 10 times and therefore, when there is

a discretion vested with the authority, he should normally exercise the discretion in a particular manner. Therefore, going by the principle adopted

by the Supreme Court in the judgment in Prerna Sahygo Vs. Authority under

Minimum Wages, (2001) 9 SCC 247 , this Court is of the view that

instead of remanding the matter for a decision on the question of penalty (for which reliance was placed upon the judgment in the case of

C.G.Igarashi Motors Ltd., Tambaram Vs. Deputy Commissioner of Labour II, Chennai and another reported in 2006 Vol 3 LLJ 733), it will

further delay the issue. Hence, this Court decides to order the compensation as per the ratio laid down by the Supreme Court in the Prerna Sahygo

Vs. Authority under Minimum Wages, (2001) 9 SCC 247 . If the penalty is ordered by the authority is upheld, ultimately, the monies will have to

be credited to the Tamil Nadu Labour Welfare Fund Board created by the State Government in Notification No.36/1972 in terms of Section 3(2)

(i) of the Minimum Wages Act, 1948 and by that process, no useful purpose will be served to the employees covered by the impugned order.

Therefore, reducing the penalty amount equivalent to the amount computed by the authority, the penalty thus, will also commensurate with the

Minimum Wages.

12. Therefore, while dismissing the writ petition, this Court directs the petitioner/ Management to pay a sum of Rs.3,25,872/- in proportion to the

44 workers, who are beneficiaries to the order automatically.

13. The order impugned in this writ petition levying penalty 10 times stands modified. It is suffice to direct the petitioner that apart from the

minimum wages already deposited and withdrawn by the workmen, the petitioner should pay Rs.3,25,872/- to the concerned workmen within a

period of eight weeks from the date of receipt of a copy of this order without fail.

14. The writ petition stands dismissed with the above direction. No costs.