(1997) 06 KAR CK 0068

In the Karnataka High Court

Case No : Writ Petition No''s. 3784 and 4080 of 1995 and 7015 of 1987

M/s. Krishna Flour Mills and Others — APPELLANT

Vs

The Commissioner of Labour in Karnataka and Others — RESPONDENT

Date of Decision : 26-06-1997

Acts Referred:
Minimum Wages Act, 1948 — Section 2 (h), 23, 27, 3

Citation : (1998) 80 FLR 1002 : (1998) 5 KarLJ 336

Hon'ble Judges : R.P. Sethi, C.J;S.R. Bannurmath, J

Bench : Division Bench

Advocate : Sri S.N. Murthy, Sri K. Lakshminarayana Rao and Sri H.M. Murlidhar, Smt. Sheela Krishnafor Sri S. Krishnaiah, for the Appellant; Sri K. Vishwanath, High Court Government Pleader, Sri V.G. Hegde, Sri S.V. Jagannath and Sri T.S. Anantharam, for the Respondent

Judgement

S.R. Bannurmath, J.—Aggrieved by the notice issued by the Labour Inspector directing the appellants to pay the cost of living allowances and Dearness Allowances (for short ''the DA'') as required under the Minimum Wages Act, 1948 (hereinafter referred to as the Act), the appellants in these two appeals have approached this Court in Writ Petition No. 15252 of 1986 and Writ Petition No. 13415 of 1986 and the learned Single Judge by the judgments dated 15-9-1995 and 18-9-1995 respectively dismissed the writ petitions. In Writ Petition No. 7015 of 1987 the petitioners, who are the employees, have challenged the order of the Labour Officer in respect of rejecting their claim for payment of DA. The said writ petition is referred to the Division Bench for consideration along with these writ appeals.

2. As common question of law and interpretation of statute arise for consideration, all these matters are heard together.

3. Sri S.N. Murthy and Sri K. Lakshminarayana Rao, learned Counsel for the appellants, submitted that the direction issued for payment of minimum wages as per the Act is illegal and erroneous inasmuch as, though they are not paying

the cost of living wages separately, what they are paying is a pay packet which is all inclusive and the total amount comes more than the minimum wages payable to the employees. In this regard, they drew our attention to the definition of "wages" u/s 2(h) of the Act, which, according to them, is an inclusive definition including the basic wages, DA, House Rent Allowance, etc. and since they are paying a higher wages in the form of pay packet than the minimum wages fixed, there is compliance with the requirements of the Act and as such the appellants are not bound to pay the minimum wages especially the allowances separately as prescribed under the concerned notification of 1986 issued by the State under Act. Sri Murthy, learned Counsel for the appellant drew our attention to the decision of this Court in Municipal Borough, Bijapur v M.N. Gundawan and Others, and the decision in Chairman of the Madras Port Trust Vs. Claims Authority and Others, , to support his contention.

4. On the other hand, Sri T.S. Anantharam, learned Counsel appearing for respondent 3 (Employees'' Union) in Writ Appeal No. 3784 of 1995 and Smt. Sheela Krishna, learned Counsel for the petitioners in Writ Petition No. 7015 of 1987, and the learned High Court Government Pleader, submit that, as the statute prescribes payment of DA separately under the notification and, since that notification has not been challenged by the appellant, the appellants are bound to pay the minimum wages as notified by the State.

5. In order to appreciate the rival contentions it is necessary to look into the aims and objects and various provisions of the Act.

6. It cannot be denied that the Act is a social welfare legislation and the notifications issued thereunder are to further the Directive Principles of the State Policy.

7. The Apex Court as well as this Court has declared that the provisions of the Act are intended to achieve the objects of social justice to workmen employed in the scheduled employments prescribing the minimum rate of wages for them. It is also laid down that, while construing the said provisions, the Court should adopt the beneficent rule of construction. If two constructions are possible, preference may be given to that construction which helps to sustain the validity of the impugned notification. The statement of aims and objects of the Act shows that the statute was enacted for fixation of minimum wages for employments covered by the schedule. The items in the schedule are those where sweated labour is more prevalent or where there is big chance of exploitation of labour. The Act also provides for periodical revision of the allowances.

8. Section 2(h) of the Act defines "wages" as follows:

" ''wages'' means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance, but does not include.--

(i)the value of.--

(a)any house accommodation, supply of light, water, medical attendance; or

(b)any other amenity or any service excluded by general or special order of the appropriate Government;

(ii)any contribution paid by the employer to any pension fund or provident fund or under any scheme of social insurance;

(iii)any travelling allowance or the value of any travelling concession;

(iv)any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(v)any gratuity payable on discharge".

9. Section 3 of the Act directs the appropriate fixing of minimum rate of wages. Section 3 reads thus:

"Fixing of minimum rates of wages.--

(1) The appropriate Government shall, in the manner hereinafter provided.-

(a)fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification u/s 27:

Provided that the appropriate Government may, in respect of employees employed in an employment specified in Part II of the Schedule, instead of fixing minimum rates of wages under this clause for the whole State, fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof:

(b)review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates if necessary:

Provided that where for any reason the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years, nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them, if necessary, and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force".

10. Section 4 of the Act prescribed the minimum rate of wages. Section 4 reads as follows:

"Minimum rate of wages.--

(1) Any minimum rate of wages fixed or revised by the appropriate Government

in respect of scheduled employments u/s 3 may consist of.--

(i)a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as the "cost of living allowance"); or

(ii)a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorised; or

(iii)an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concession, if any.

(2) The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rates shall be computed by the Competent Authority at such intervals and in accordance with such directions as may be specified or given by the appropriate Government".

11. Section 5 prescribes the procedure for fixing and revising minimum wages.

Section 12 of the Act fixes the liability on the employer for payment of minimum rates of wages.

12. Appellant''s Counsel argued that the definition of "wages" u/s 2(h) of the Act is an inclusive definition. According to the appellants, "wages" includes all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment. It is to be noted that u/s 2(h) of the Act certain categories of payments have been excluded. They are:

(i) The value of (a) any house-accommodation, supply of light, water, medical attendance, or (b) any other amenity or any service excluded by general or special order of the appropriate Government;

(ii) Any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;

(iii) Any travelling allowance or the value of any travelling concession;

(iv) Any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(v) Any gratuity payable on discharge.

13. It is contended that as DA is not specifically excluded, the same is part and parcel of "wages" and, since the wages paid by the appellants is on higher side, the minimum wages under the notification the employers need not pay the same separately.

14. The appellants submit that what they are paying is a gross pay packet to the worker which exceeds from what is fixed by the Government as minimum wages both basic and other allowances put together. It is further argued that, though they have not paid separately "cost of living allowance", since the total emolument paid to the worker is much more than what they are entitled to receive in terms of minimum wages notified, they have not violated any provision of the Act.

15. We are afraid, this contention, though appears to be attractive, cannot fulfill the mandatory requirements of law.

Section 4 of the Act states that minimum rate of wages to be fixed by the Government in respect of the scheduled employment may consist of (1) basic rate of wages and (2) special allowances at a rate to be adjusted at such intervals and in such a manner as the Government may direct as nearly as practicable with a variation in the cost of living index number applicable to such worker which is termed as cost of living allowance or DA in common parlance. Hence, it is clear that the minimum wages consists of 2 parts, i.e., (1) basic rate of wages and (2) special allowance like cost of living allowance and other allowances such as house rent allowance, travelling allowance, etc. u/s 5 of the Act a procedure has been laid for fixing and revising minimum wages. u/s 5(2) of the Act the appropriate Government, after considering the advice of the committee appointed under clause (a) of sub-section (1) or all representations received by it shall, by notification in the Official Gazette, fix the rate of wages in respect of each scheduled employment and unless such notification otherwise provides, it shall come into force on the expiry of 3 months from the date of its issue. In the present case, by a notification dated 14-2-1986 the State Government has fixed the minimum rate of wages. In the notification published by the State, the State Government has fixed the minimum rate of wages payable to the employee and further it is stated that in addition to the basic wages mentioned in the schedule the employees shall be paid the "cost of living allowances" at the rate prescribed following thereof. It is also to be noted that sub-clause (3) of clause (ii) of the notification states that wherever the prevailing rate of wages is higher, the higher rate of wages shall be continued to be paid.

16. Thus, it is clear that under the notification the State has fixed 2 separate categories of minimum rates of wages to be paid to the employees -- one basic and the other ''other allowance'' i.e., DA. It is to be noted that the appellants have not challenged the validity of these notifications and as such the notifications have been accepted by them. As such, the mandatory requirement of the Act is that the appellants must pay under the two different categories. The argument of the appellants that they are paying to the employees a gross pay packet which incidentally is higher than the minimum rate of wages fixed by the State and, hence, they are not liable to pay the cost of living allowance may not be a sound proposition. Merely because the appellants are able to pay higher rate of wages it does not absolve them from paying separately the "cost of living

allowances". As sub-clause (3) of clause (ii) of the notification clearly indicates, even if the appellants are paying higher rate of wages, they shall continue to pay. In other words, they have to continue to pay the "wages" now being paid and in addition to that the minimum rate of "cost of living allowance" is to be paid by them separately as per the notification.

17. In our opinion, the ratio in the decision referred to by the learned Counsel for the appellants are not applicable to the present case. In the Municipal Borough''s case, supra, the question was, when the wages actually paid exceed the minimum fixed inclusive of overtime payable, whether the employee is entitled for the same and this Court held that though the employee has a statutory right to receive wages at the rate not lower than the notified minimum rate, no employee, if it is found that wages paid by the employer are more than what the employee would have got on the basis of the minimum rate of wages for the normal working days plus the wages for the overtime work. It is to be noted that the case was for consideration of payment of overtime work undertaken by the employee. In the present case, it is cost of living allowance which is to be considered. The cost of living allowances is a variable factor. The cost of living goes on changing. It depends on rise or change in the day-to-day living index and inflation. As such, as the cost of living allowance is a variable factor, it cannot be said that the pay packet fixed once for all by the employer would be inclusive of the living wages. Hence, the decision referred to above by the learned Counsel for the appellants is not applicable to the present case.

18. For the reasons stated above, we uphold the direction issued by the Labour Inspector and hold that the appellants are liable to pay the minimum wages as fixed by the State under separate items and, in view of the same, the writ appeals are dismissed.

19. So far as the writ petition is concerned, we are of the opinion that the same has to be allowed. Accordingly, it is allowed and a direction is issued to the concerned authority to fix the minimum wages in the light of the observations made by us above.

No order as to costs.

