

(2004) 02 KL CK 0034
In the High Court Of Kerala
Case No : O.P. No. 7007 of 1998

Paduppu Ksheerolpadaka S.S. Ltd.

APPELLANT

Vs

Varghese

RESPONDENT

Date of Decision : 25-02-2004

Acts Referred:

Minimum Wages Act, 1948 — Section 2, 20(2)

Citation : (2004) 102 FLR 204 : (2004) 2 KLT 244 : (2004) 3 LLJ 388

Hon'ble Judges : R. Rajendra Babu, J

Bench : Single Bench

Advocate : M.V. Joseph, for the Appellant; Subash Cyriac and M.J. Rajasree, Government Pleader, for the Respondent

Judgement

R. Rajendra Babu, J.—Ext.P1 order passed by the authority under the Minimum Wages Act is under challenge at the instance of the Padappu Ksheerolpadaka Sahakarana Sangham Ltd. C.49(D), Padappu, (hereinafter referred to as the Sangham). The 1st respondent was working as a milk tester under the petitioner Sangham, a co-operative society in the category of Anand model co-operative societies registered under the Co-operative Societies Act. The Sangham was engaged in the collection of milk from small farmers and was distributing among the public with very low financial resources. The 1st respondent filed a claim petition before the authority appointed under the Minimum Wages Act (Deputy Labour Commissioner, Kannur) u/s 20(2) of the Minimum Wages Act alleging that the petitioner had not paid the minimum wages for the period from 1.1.93 to 1.1.94. The petitioner Sangham contended that it was not a scheduled employment coming u/s 2(g) of the Minimum Wages Act. It was also contended that a consolidated amount of Rs. 350/- was paid to the 1st respondent and his work was from 6.30 a.m. to 8.30 a.m. on all days and the wages of the 1st respondent was covered by a settlement entered into between the parties before the District Labour Officer, Kasaragod. The authority under the Minimum Wages Act did not accept the contentions put forward by the petitioner and allowed the claim petition filed by the 1st respondent and directed the petitioner to pay an

amount of Rs. 9453.40. The Sangham filed this OP challenging the order of the authority under the Minimum Wages Act and for quashing the same.

2. Heard the learned counsel for the petitioner and the learned counsel for the 1st respondent.

3. The learned counsel for the petitioner submitted that the Government had not fixed minimum wages for the employment in the milk marketing societies and Exts.R1(a) and R1(b) notifications issued under the Minimum Wages Act would take in only the employment in dairy farms. The above notifications were issued u/s 3 of the Minimum Wages Act in respect of the employment of climbing of arecanut trees and dairy farming. The above notifications would disclose the different categories of employment in groups A, B, C and D in the dairy farms. It does not specifically say that it shall include the milk trading societies which collect milk from small farmers and distribute among the local public.

4. The learned counsel for the petitioner submitted that the petitioner society is one coming under the Kerala Co-operative Milk Marketing Federation Ltd. and the service conditions and pay particulars of the employees in the Anand model co-operative societies registered under the Kerala Co-operative Societies Act had already been fixed and circular also had been issued. The circular issued by the Federation dt. 16.3.92 also was brought to my notice. The above circular prescribes the different pay to the different employees working in the milk societies. The societies also have been classified in eleven categories as items 1 to 11 on the basis of the quantity of milk collected by the societies. The pay for the same employment in the different categories of societies based on the collection of milk also had been specifically mentioned. The learned counsel for the petitioner submitted that those are small scale societies collecting milk from the local farmers and distributing the same within the locality and the above societies do not have much resources for expansion, and if the minimum wages fixed to the workers in the dairy farms has to be adopted, the existence of many of the societies would be in peril and most of the societies will have to be closed down. It was further submitted that the Federation has fixed the pay of all its employees working in the different classes of milk societies in the different parts of the State so that the societies can function with its small resources. When the Federation had fixed a uniform pay for the workmen based on the quantity of milk collected and sold, I do not think that Ext.R1(a) and R1(b) notifications would take in such milk trading societies also within the ambit of dairy farms. It was as per Ext.R1(a) and R1(b) notifications, the employment in the dairy farms had been brought under the purview of the Minimum Wages Act. But I do not think that dairy farms would include the small societies collecting milk from small farmers and distributing in the locality.

5. The learned counsel for the 1st respondent placed reliance on the decision of a learned Single Judge of this court in Ext.R1(c) judgment in OP 5968/91 to substantiate the argument that Ext.R1(a) and R1(b) notifications are applicable to the employments in milk societies. In the above case the learned Single Judge

of this court took the view that the employment in the milk societies also would come under the definition of dairy farming as per Exts.R1(a) and R1(b) notifications. In this context it would be relevant to consider the opening portion of Ext.R1(a) notification fixing the minimum wages. It reads:

"B. Employments in Dairy farming

xxx xxx xxx I. Basic wages.

(i) Monthly rates for 8 hours work per normal working day".

Thus it is clear that the minimum wages fixed was in respect of employments where the workman has to do 8 hours work. In the present case, it was specifically alleged that the milk tester has to do work in the morning for 2 hours, thereafter he had no work. The observation of the committee constituted under the Minimum Wages Act and extracted in Ext.R1(c) judgment would make it clear that the employment in the dairy farms and the collection of milk from small farmers and distributing the same were different and the minimum wages fixed can only be with respect to the dairy farms, large scale and small scale, where the workmen will have to do 8 hours work a day. But so far as the milk societies are concerned, they only collect milk from small farmers and sell it only in the locality and their work was only for few hours and such societies cannot be treated as dairy farms coming within the ambit of Ext.R1 (a) and R1(b) notifications.

6. Ext.R1 (c) judgment was pronounced on 3.11.92 and the OP 5968/91 was filed in 1991. The circular fixing the pay of the employees in the societies was issued on 16.3.92 i.e. the above circular was issued after the filing of the above OP 5968/91. The judgment (Ext.R1(c)) did not disclose that the circular issued by the Federation fixing the wages of the employees was brought to the notice of the above court. A learned Single Judge of this Court in a later decision in Cochin Co-operative Hospital v. Annamma 1998 (1) KLT 801 held that Rule 189(3) of the Co-operative Societies Rules would be applicable to all societies registered under the Co-operative Societies Act. Section 189 of the Co-operative Societies Rules deals with the remuneration and allowances payable to the employees of the Co-operative Societies. In the above circumstances I am not inclined to adopt the stand taken by the learned Single Judge in OP 5968/1991 and I hold that (the employment in the co-operative societies engaged in the trade of collecting milk and distributing it in the locality would not come under the definition of, dairy farms in Exts.R1(a) and R1(b) notifications. In fact, a settlement had been arrived at between the employees and the Federation and the wages to the employees working under such societies had been fixed on the basis of the collection and distribution of milk and a circular had been issued. The authority under the Minimum Wages Act can pass an order only when the employment was notified under the schedule. The small scale collection and sale of milk from the farmers by the society do not come within the dairy farming and as such the authority had no jurisdiction to pass an order u/s 20(2) of the Minimum Wages

Act. Hence the above impugned order is liable to be quashed.

In the result Ext. P1 order passed by the 2nd respondent is set aside. This order shall not preclude the 1st respondent from working out other remedies, if available.