

(1994) 08 MP CK 0030
In the Madhya Pradesh High Court
Case No : M.P. No. 2008 of 1986

Priya Darsan Agarbatti

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 25-08-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 19, 19(3), 19(6)
Minimum Wages Act, 1948 — Section 2(A), 20(3), 3(2A)

Citation : (1994) ILR (MP) 317 : (1995) JLJ 147 : (1995) 2 LLJ 1084 : (1995) 40 MPLJ 326 : (1995) MPLJ 326

Hon'ble Judges : U.L. Bhatt, C.J.; M.V. Tamasker, J

Bench : Division Bench

Advocate : Rajendra Menon, for the Appellant; Anoop Choudhary, A.A.G., for the Respondent

Final Decision : Partly Allowed

Judgement

U.L. Bhat, C.J.

The five petitioners are engaged in manufacture of Agarbatti in Sagar district. They have filed this writ petition challenging Annexure-G order dated March 31, 1986 passed by the Labour Court, Sagar (Minimum Wages Authority).

Minimum Wages were fixed for the employees working in Agarbatti industry under the provisions of Minimum Wages Act, 1948, for the first time by notification Annexure-R/1 dated June 26, 1983. There was a dispute between some of the manufacturers including the petitioner on the one hand and their employees on the other regarding the rate of wages payable. The dispute was referred to the M.P. Industrial Tribunal, Indore by the State Government u/s 10(1) of the Industrial Dispute Act, 1947. The reference was numbered as 1 of 1979. During the pendency of the reference, the parties settled their dispute. The Tribunal, on the basis of the settlement passed two awards - one between petitioners Nos. I to 4 herein and the union representing the employees and the other between 5th petitioner herein and certain others on the one hand and the

union on the other. Copies of these awards are marked as Annexures-B and C respectively of the writ petition. The parties agreed in the settlement that it will be in operation till October 22, 1986. The Inspector under the Minimum Wages Act filed a complaint before the Labour Court (Authority under the Minimum Wages Act) u/s 21 of the Act alleging that for the period between October 1, 1984 to October 31, 1984 these employers did not pay minimum wages as notified under Annexure. R/1 but paid wages less in amount than minimum wages, namely wages as covered by the awards. The present petitioners resisted the complaint on the ground that the period in question fell within the period of operation of the award namely till October 22, 1986 and, therefore, minimum wages fixed by the Government will not apply during the period as contemplated in Section 3(2-A) of the Minimum Wages Act. The Labour Court overruled this contention and passed an order directing the present petitioners to pay the deficit of wages as per the minimum wages notification. Levied penalty of 50% u/s 20(3)(ii) and also directed payment of compensation at five times the amount in deficit u/s 20(3)(i) of the Minimum Wages Act. This order is now being challenged.

Section 3 of the Minimum Wages Act deals with fixation of minimum rates of wages. The appropriate Government is empowered to fix the minimum wages payable to employees employed in an employment specified in Part I or II of the schedule. Sub-section (2-A) engrains an exemption in cases where proceedings are pending before a Tribunal or other authority or an award has been made by a Tribunal. We are concerned only with the case of an award made by the Tribunal being in operation. In such cases, according to Sub-section (2-A), where an award is in operation and a minimum wages notification is issued during the operation of the award, then, notwithstanding anything contained in the Act, the minimum rates of wages so fixed shall not apply to those employees during the period in which the award is in operation. Where a notification is issued during the operation of an award, it shall not apply to the employees during that period.

The award was passed on November 30, 1981. Though the settlement between the parties was that it will remain in operation till October 22, 1986, the period of operation of the award is restricted statutorily by Section 19(3) of the Industrial Disputes Act. According to this provision, an award shall remain in operation for a period of one year from the date on which the award becomes enforceable. The appropriate Government may reduce the period and fix such period as it thinks fit. The appropriate Government may extend the period of operation by any period not exceeding one year at a time but the total period of operation of the award cannot exceed three years. The appropriate Government has not interfered in the matter of award under consideration. Therefore, under the terms of Section 19(3) of the Industrial Disputes Act, the award shall remain in operation for a period of one year. According to learned Additional Advocate General, the exemption u/s 3(2-A) of the Minimum Wages Act relates only to the period during which the award is in operation and the award in this case ceased to be in operation after the expiry of the period of one year from November 30,

1981 and, therefore, the minimum wages notification would take effect from the expiry of the period of one year. The contention of the learned counsel for the petitioners is that notwithstanding the expiry of the period of one year from the date of coming into force of the award, the award must be deemed to be in operation even thereafter till the expiry of two months from the date of issue of notice of intention to terminate the award u/s 19(6) of the Industrial Dispute Act. No notice of termination has been issued in this case and, therefore, during the relevant period i.e. October 1, 1984 to October 31, 1984 the award was in operation and by virtue of Section 3(2-A) of the Minimum Wages Act, the minimum wages notification could not apply and, therefore, the conclusions and the order of the Labour Court were not justified. The relief claimed in the writ petition for declaration that Section 5, 9 and 27 of the Act are ultra vires is not pressed.

Section 19(6) of the Industrial Disputes Act reads thus:

"Notwithstanding the expiry of the period of operation under Sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award."

Sub-section (3) of Section 19 states that an award shall remain in operation for a period of one year from the date on which it becomes enforceable. The words "period of operation" referred to in Sub-section (6) must necessarily have the same connotation as the words "period of operation" have in Sub-section (3). The period of operation under Sub-section (3) is one year. Therefore, on the facts of the case, the reference to period of operation in Sub-section (6) must be taken to be a reference for the period of one year. That being so, the effect of Sub-section (6) is that notwithstanding the expiry of the period of one year from the date of commencement of the award (commencement being November 30, 1981), the award shall continue to be binding on the parties until the expiry of two months from the date on which any party intimates its intention to terminate the award. A plain reading of this provision would indicate that after December 1, 1982, the award which was not in operation would be binding on the parties.

A controversy has been projected in the course of arguments before us. Learned counsel for the petitioners invited our attention to the averment in para 10 of the writ petition that "no notice has been given either by the workmen or by any other parties terminating the Award and the Award is still in operation." Reference is also made to paragraph 3 of the return where it is stated that a notice dated July 30, 1984 was already served on the petitioner intimating that the workers repudiate the award u/s 19(6) of the Industrial Disputes Act and, therefore, the award came to an end. The petitioners have not filed a rejoinder rebutting the specific fact pleaded in para 3 of the return. Along-with the reply to the application for stay, the respondents have also filed Annexure-R/1 which is a copy of the notice issued by the union to the petitioners with copy to the

Assistant Labour Commissioner, expressing the intention of terminating the award u/s 19(6) of the Act. Learned Counsel for the petitioners submitted that this document cannot be acted upon. In the statement or objection filed by the petitioner before the Labour Court it was not specifically contended that no notice of such intention as required u/s 19(6) had been received. There was an earlier writ petition filed by the petitioners challenging the minimum wages notification that was subsequently withdrawn. It is brought to our notice that even in that writ petition, the petitioners did not raise a contention of want of notice of intention u/s 19(6) of the Act. In the circumstances, we cannot accept the submission made on behalf of the petitioners that notice of intention had not been given. We proceed on the basis that such a notice had been given.

The real meaning and content of Sub-section (3) and (6) of the Industrial Disputes Act has been explained by the Supreme Court in *Life Insurance Corporation of India v. D.J. Bahadur and Ors.* (1981 I LLJ 1). That was a case of settlement of 1974 the period of which had expired. The question was whether the settlement was still in force or not. The Court indicated that there are three stages or phases with different legal effects in the life of an award or settlement. There is a specific period contractually or statutorily fixed as the period of operation. Thereafter, the award or settlement does not become non est but continues to be binding. This is the second chapter of legal efficacy but qualitatively different. Then comes the last phase. If notice of intention to terminate is given u/s 19(6) then the third stage opens where the award or settlement does survive and is in force between the parties as a contract which has superseded the earlier contract and subsists until a new award or negotiated settlement takes its place. The Court observed:-

"Like Nature, Law abhors a vacuum and even on the notice of termination u/s 19(2) or (6) the sequence and consequences cannot be just void but a continuance of the earlier terms, but with liberty to both sides to raise disputes, negotiate settlements or seek a reference and award. Until such a new contract or award replaces the previous one, the former settlement or award will regulate the relations between the parties....."

The Supreme Court has emphasised the difference between expiry of period of operation and the subsequent period when the terms of the award will be binding between the parties as a contract. The words "period of operation" have been taken from Section 19 of the Industrial Disputes Act as well as Section 3(2-A) of the Minimum Wages Act. Period of operation is the period referred to in Section 19(3) of the Act, namely one year or the period which may be reduced or extended by the Government, as the case may be. Once this period expires, the period of operation has come to an end and the award as such ceases to be in operation. But this does not leave a vacuum. The vacuum is filled by the terms of the erstwhile award in the nature of a contract binding between the parties. That is why Section 19(6) does not speak of extension of the period of operation but speak as of the award continuing to be binding on the parties. It is this difference

which had been highlighted by the Supreme Court in paragraph 3 of the above judgment by the following words:-

"This is the second chapter of legal efficacy but qualitatively different as we will presently show." The Court proceeded to indicate that even on the notice of termination, until a new contract replaces the previous one, the former award will regulate the relations as a contract which has superseded the earlier contract. In these circumstances, whether or not notice of termination has been given, it has to be held that once the period of one year or the extended period has expired the award has ceased to be in operation though the terms of the award would have been binding on the parties. It must follow that the minimum wages notification issued on June 24, 1963 was issued not during the operation of the award but after the award ceased to be in operation. Therefore, Section 3(2-A) of the Minimum Wages Act is not attracted. The Labour Court was right in holding that the petitioners were required to implement the minimum wages notification.

Learned counsel for the petitioners contended that there is no rationale behind the quantum of compensation awarded by the Labour Court. Section 20(3)(i) of the Minimum Wages Act enables the Labour Court to direct payment to the employees of the amount by which the minimum wages payable to him exceed the amount actually paid together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount of such excess. The matter is entirely within the discretion of the Labour court. The discretion has to be exercised on consideration of the entirety of the facts and circumstances. As far as the petitioners are concerned, the position of law was not entirely clear. Annexure-C of the writ petition is a copy of letter dated May 5, 1984 sent by the Labour Commissioner stating that during the operation of the award minimum wages notification will not apply. There is some substance in the submission made that the petitioners were under the belief that minimum wages would not be payable either till October 22, 1986 or till expiry of two months from the date of notice of intention. In the circumstances, we are of the opinion that the compensation awarded is excessive and deserves to be reduced by half.

The writ petition is disposed of modifying the award of the Labour Court reducing the quantum of compensation by 50%. There shall be no order as to costs. Security deposit, if any, shall be refunded to the petitioners.