

(1993) 01 KL CK 0067

In the High Court Of Kerala

Case No : O.P. No's. 7219/90 and 407, 5535 and 10009 of 1991

Sabi Joseph

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 25-01-1993

Acts Referred:

Constitution of India, 1950 — Article 23
Minimum Wages Act, 1948 — Section 2, 20, 20(3), 3

Citation : (1993) 1 KLJ 443

Hon'ble Judges : Varghese kalliath, J;K. Narayana Kurup, J

Bench : Division Bench

Advocate : Mohammed Nazir, Government Pleader in O.P. Nos. 407, 5535 and 10009 of 1991, for the Appellant; Mohammed Nazir, Government Pleader in O.P. No. 7219 of 1990, N.P. Samual, for Respondents Nos. 1 to 18 in O.P. 407 of 1991 and Thomas Antony, in O.P. No. 10009 of 1991, for the Respondent

Judgement

K. Narayana Kurup, J.—These Original Petitions are being heard and disposed of by a common judgment. O.P. No. 407/91 is treated as the main petition and the fate of the rest of the petitions (O.P. Nos. 5535 and 10009 of 1991) except O.P. No. 7219/90 will depend upon the outcome of the main petition, viz. O.P. No. 407/91, so that if O.P. No. 407/91 is allowed, O.P. Nos. 5535 and 10009/91 will stand allowed and if O.P. No. 407/91, is dismissed, O.P. Nos. 5535 and 10009/91 also will stand dismissed. All the above Original Petitions viz. O.P. Nos. 407, 5535 and, 10009/91 are filed by the respective Petitioners therein challenging the order of the authority constituted under the Minimum Wages Act making payment of minimum wage applicable to employees, employed in the Hostels attached to the respective colleges under the Petitioners which is a scheduled employment. O.P. No. 7219/90 is at the instance of the President of the Medical College Hostel and Mess Employees Association for the issuance of a writ of mandamus directing the Respondents 3 to 13 (Principal, Warden, etc. of the Medical College, Kozhikode) to implement Ext. P-4 Notification G.O. (Rt.) No. 1292/86/LBR, dated 30th August, 1986 issued by the Government of Kerala u/s

3 of the Minimum Wages Act fixing minimum wages for employees attached to the Hostels in Colleges in the State, so that the Petitioner in O.P. No. 7219/90 can succeed only if the rest of the petitions are dismissed.

O.P. No. 407/1991:

In this Original Petition, the Petitioner, the Principal, Government Engineering College, Trichur prays for the issuance of a writ of certiorari to quash Ext. P-1 order passed by the 19th Respondent, the Deputy Labour Commissioner, Trichur the Appellate Authority under the Minimum Wages Act, 1948 in M.W.A. 13 of 1989. M.W.A. 13 of 1989 on the file of the 19th Respondent herein was an application filed by one P.R. Sreenivasan and 17 Others who are employed in the hostel attached to the Trichur Government Engineering College and who are Respondents 1 to 18 in this Original Petition against the opposite party therein, the Principal, Trichur Government Engineering College, and the Petitioner in this Original Petition u/s 20 of the Minimum Wages Act, 1948 for arrears of minimum wages for the period from December 1988 to May, 1989 (both months inclusive) amounting to Rs. 26,510.

2. The case of the Respondents 1 to 18 was that they are employees of the hostel mess attached to the Trichur Government Engineering College in different categories such as cooks, kitchen helpers, suppliers, etc, that they are eligible to the minimum rates of wages payable to the employees employed in the employment in hostels in the State and that they are employees of the Petitioner. They therefore prayed for a direction u/s 20(3) of the Act for payment of difference in wages under the Minimum Wages notification and the wages actually paid. The Petitioner denying liability for payment, contended that Respondents 1 to 18 are not employed by him and that the Petitioner is the head of the institution directly run by the State Government and all employees working in the institution are appointed by the State Government based on the advice of the Public Service Commission or Employment Exchange, as the case may be and that all regular employees are paid wages as fixed by the Government from time to time. It is further contended by the Petitioner in the O.P. that Respondents 1 to 18 did not produce any letter of appointment to substantiate their claims that they are employed by the Petitioner and that the mess attached to the hostel is run by the students and food expenses are met by the students themselves on the basis of dividing system, that the students for meeting certain additional work of casual nature had engaged some casual labourers like Respondents 1 to 18 on contract basis and their charges, were met by the students from the mess fund pooled by them. It was also averred by the Petitioner that there is a hostel council consisting of 21 elected student members to look after the affairs of the hostel mess which is assisted by a mess committee consisting of mess secretary, mess directors and some nominated members. The Petitioner pointed out that the hostel council is the authority to take decision for appointing casual labourers and the wages of the casual labourers thus engaged by the hostel council are paid by the students themselves. In the result, the,

Petitioner denied responsibility for paying minimum wages to Respondents 1 to 18 and pleaded that he may be exonerated from any liability to pay minimum wages as demanded by Respondents 1 to 18 as the Petitioner is not the "employer" of Respondents 1 of 18 and hence not liable to meet the claim of the Respondents and hence the application is liable to be dismissed.

3. A.W. 1, Respondent No. 13 in this Original Petition who was one of the applicants before the Authority was examined on the side of the applicants. He deposed that:

he and other 17 persons in the application are the employees in the hostel attached to Government Engineering College, Trichur, that he has 2 years" service in the hostel Whereas Ors. are having 2 to 14 years service. The hostel and hostel mess are being run by the college authorities. They were employed by the warden of the hostel as per the instructions of the Principal of the college. The warden is acting as the agent of the Principal. Therefore, the Principal of the college is the employer of the applicants who filed this application for the payment of difference between minimum wages payable under the notification and the wages actually paid to them.... The averment in the counter statement of the opposite party that the applicants Were not employed with the opposite party is not correct. The applicants have no employer-employee relationship with the mess committee. The mess committee is only a temporary arrangement made by the college authorities to run the hostel. The students will remit the mess bills and room remit in the hostel office. In cross, he deposed that he is the secretary of the union functioning among the hostel employees. He also deposed that the mess committee is elected every year. But the wages are paid to the applicants by hostel warden. No document is marked on the applicants" side.

4. M.W. 1, one A.N. Chandran, Assistant Professor of the college in Chemistry and Warden of the hostel attached to Government Engineering College, Trichur was examined on the side of the Petitioner. He deposed that:

the college hostel is controlled by a hostel council consisting of 21 elected members of students and the Warden is the ex-officio member. There is a mess committee to conduct the hostel mess so as to get food to the hostel inmates. It comprises of five students representatives and the garden. The staff of the hostel are recruited by Government through P.S.C. and Employment Exchange. Accounts officer, clerks, cooks, scavengers, gardeners, sick room attenders, matrons, watchman, surgent are the persons included under the staff. The duties of the warden are to maintain law and order among the students, maintenance of attendance register and disbursing of the amount to the hostel staff, etc.... The amounts advanced by the students for the conduct of the hostel mess will be deposited in the P.D. Account (Personal Deposit Account) of the warden. The amount will be expended as per the direction of the council. The warden has no independent poorer to meet any expenditure from the fund.... He knows the applicants and they were casual labourers appointed by the hostel council. No permission of warden is necessary to appoint casual labourers. There is no

employer-employee relationship between Government and the applicants. Wages to the casual labourers are paid by the students from their funds. Therefore, the opposite party is not the employer of the applicants and hence not liable to pay the arrears of wages claimed by them.

5. The Authority, after elaborate consideration of the evidence both oral and documentary found, among other things, that "the P.D. Account in connection with the running of hostel mess is operated in the name of the Warden of the hostel who is none other than an Assistant Professor in the college. He was appointed as a Warden of the hostel by the Principal of the college. The receipts and expenditure in connection with the conduct of the mess hostel are accounted by the regular ministerial staff attached to the hostel who are government servants under the control of the Principal of the college. The building in which the hostel mess is conducted belongs to Government Engineering College, Trichur. The furniture and the utensils in the hostel mess are the preparation of the college.... The applicants are the employees employed in the mess hostel having services from 2 to 14 years. They have no benefits of provident fund leave facilities, etc. just like the other employees employed in the preparation of food and supply to the hostel inmates. In short, I come to the conclusion that the Applicants are the employees employed on behalf of the Principal than directly, for the conduct of the hostel mess. Therefore, the Principal of the Engineering College is the employer in respect of the applicants" and in consequence, directed him to pay Respondents 1 to 18 the amounts noted against their names being the difference between the wages legally, due to them as per the notification and the wages actually paid to them, the total amounting to Rs. 26,510 within 30 days from the date of the order, failing which legal steps will be taken against the Petitioner to recover the amount as per the Rules without further notice."

6. Aggrieved by Ext. P-1 order of the Authority, the Petitioner moved the instant Writ Petition for the issuance of a writ of certiorari to quash Ext. P-1 order O.P. No. 407/91 came up for admission on 30th October 1991 along with O.P. Nos. 7219/90, 5535/91 and 10009/91 and the learned Judge, by an order dated 30th October 1991 referred the matter for, being heard by a Division Bench, as according to the learned Judge, these Original Petitions involve certain important questions of law having far-reaching effect not only on the parties to these litigations, but also similarly placed persons throughout the State working in different hostels. It is under the above circumstances that the above Original Petitions came up for hearing before us.

7. It was contended by the learned Counsel for the Petitioner that the findings entered by the Authority in Ext. P-1 to the effect that the Petitioner is the appointing authority in regard to Respondents to 18 has no factual basis and in fact there is no master-servant relationship between Petitioner and Respondents 1 to 18 inasmuch as Respondents 1 to 18 are only casual employees engaged by the students for their personal benefits and if at all the applicants are entitled to

the benefits of the notification issued u/s 3 of the Minimum Wages Act, it has to be met by the students Mess Committee and the expenses are to be divided, among the students as is done in respect of other expenses of the mess. It was also contended that the Petitioner or the warden has no power to appoint anybody, except the delegated power to appoint certain last grade posts and at any rate, Respondents 1 to 18 are not appointed either by the Principal or by the Government and further that the reasoning of the Authority is based on surmises and conjectures. It was also contended on behalf of the Petitioner that Respondents 1 to 18 are not employed by him, that regular appointments to the hostel like cooks, etc. are employed by the Government directly through the regular channel of Public Service Commission, Employment Exchange, etc. the applicants are not likewise employed; moreover, Respondents 1 to 18 having been appointed by the students themselves, the Petitioner is not in any way liable to pay any amount as fixed by the notification issued under the Minimum Wages Act.

8. In reply to the above submission of the learned Counsel for the Petitioner, learned Counsel for Respondents 1 to 18 contended that Respondents 1 to 18 are employees appointed by the Petitioner who is wielding direct control over the warden of the hostel and the Petitioner/Principal is a statutory authority vested with all powers to manage the affairs of the hostel. According to learned Counsel, both the Petitioner and the warden are employers, of Respondents 1 to 18 and as such, they are liable to pay minimum wages to Respondents 1 to 18 as per the notification issued under the minimum Wages Act. It was further contended with reference to the definition of employer-employee occurring in Minimum Wages Act, that Respondents 1 to 18 are employed, by the Petitioner. An extreme contention was also advanced on behalf of Respondents 1 to 18 to the effect that the Petitioner being the nominee of the Government, Respondents 1 to 18 are government servants because they are appointed by the Principal who is none other than the nominee of the Government. It was also submitted that though Respondents 1 to 18 are not Government servants appointed by the Government, all the same they are employed by the Principal who, under the Statute, is to manage the hostel and as such liable to pay the minimum wages as claimed. He also invited our attention to the definition of "employer" occurring in Section 2 of the Minimum Wages Act and contended that the said definition is wider than the definition of employer in the Industrial Disputes Act and hence the Principal being the head of the Institution and also an appointee of the Government being vested with a supervision and control over Respondents 1 to 18, he comes within the definition of "employer" and hence liable to pay minimum wages. In short he would contend that the Principal being the nominee of the Government, Respondents 1 to 18 are Government servants because they are appointed by the Principal.

9. Having heard the learned Counsel for the Petitioner and the learned Counsel for Respondents 1 to 18, we are of the view that the Original Petition is devoid of merit and the same is liable to be dismissed and Respondents 1 to 18 are

entitled to minimum wages as held by the Authority. We propose to, consider the question on the basis of a broader canvass in the light of the decision reported in People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, . This decision deals with the content and scope of Article 23 of the Constitution of India.

10. The employer is defined u/s 2(e) of the Minimum Wages Act. Petitioner herein is under an obligation to enforce the mandate contained in Article 23 of the Constitution of India. We cannot loose-sight of the fact that the Minimum Wages Act is a preconstitution enactment and the provisions contained, therein have to be read subject to the provisions of the Constitution. It is in this context that Article 23 of the Constitution assumes importance in this base. By virtue of the said Article by Clause (1) thereof, forced labour is prohibited. Where a person is compelled by force of circumstances like penury, hunger or poverty to provide labour or service to Anr. for wages which is less than the minimum charge, the labour or service provided by him clearly falls within the scope and ambit of the words forced labour under Article 23 of the Constitution of India. In such a situation when the infraction of the constitutional right is writ large, this Court has the obligation to enforce the constitutional guarantee contained in Article 23 of the Constitution of India. "Force" which would render the labour offence, may assume different circumstances and situations. It may be physical force, pure and simple or it may be force arising out of enforcement of legal provision or it may be compulsion from hunger, poverty, want and destitution. The Supreme Court while deprecating the practice of contractors engaging labourers for "Asiad Projects" at wages or for remuneration which is less than minimum wages held that the practice is highly obnoxious and offends human dignity and is contrary to human values. The court observed as follows:

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 (sic) provide labour or Service to Anr. 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.... We are therefore of the view that where a person provides labour or service to Anr. 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.

Vide People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, .

11. After condemning the pernicious practice of forced labour which according to the court takes within its fold labour or service for remuneration which is less than minimum wage, the court proceeded further to hold that the prohibition contained in Article 23 protects an individual not only against the State but also against private citizens.... In the judgment in *Asiad* case supra, in paragraph 12 it has been held that the "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." In essence, forced labour in whatever form or manifestation practised by any person or authority comes within the constitutional prohibition and is therefore liable to be interdicted by this Court. Viewed in the above light, the engagement of Respondents 1 to 18 by the Petitioner through the agency of the mess council and mess committee which is run by the students and exacting labour or service from them for remuneration which is less, than the minimum wages amounts to forced labour prohibited by Article 23 of the Constitution of India. Hence we have no hesitation, in holding that Respondents 1 to 18 are entitled to the minimum wages as fixed by the notification issued by the State Government under the Minimum Wages Act from the Petitioner. Perhaps petitioned may have a right to shift this burden to pay the minimum wages to the students who are the persons benefited by the service of the Respondents. We do not want to say anything about the method of recovery of the amount to be paid as minimum wages by the Petitioner from the ultimate recipient of the services of Respondents 1 to 18. In the result, this Original Petition is dismissed and Ext. P-1 order of the 19th Respondent dated 29th August 1990 in M.W.A. No. 13/89 is hereby confirmed.

12. However, we make it clear that we are not deciding the status of these employees represented by Respondents 1 to 18 as members of Government service or not. Nevertheless, we feel that since they are working in a Government hostel controlled and administered by the Petitioner who in turn gets his authority from the Government and being in a scheduled employment, Respondents 1 to 18 are entitled to minimum wages as fixed by the notification as aforesaid and the said minimum wages has to be paid by the person in charge of the hostel, i.e. the Petitioner herein.

13. Since O.P. No. 407/91 is dismissed, the connected Original Petitions, viz. O.P. No. 5535/91 and O.P. No. 10009/91 are also dismissed. In view of the dismissal of O.P. Nos. 407/91, 5535/91 and 10009/91, O.P. No. 7219/90 filed at the instance of the President of the Medical College. Hostel and Mess Employees Association for the issuance of a writ of mandamus, directing Respondents 3 to

13 therein to implement Ext. P-4 notification issued by the Government of Kerala fixing minimum wages for employees attached to the hostel mess has to be allowed and we do So. Original Petitions are disposed of accordingly. No costs.