
(1963) 03 CAL CK 0006
In the Calcutta High Court

Shib Prosad Ghosh

APPELLANT

Vs

District Judge (Authority under the Minimum Wages Act)

RESPONDENT

Date of Decision : 19-03-1963

Acts Referred:

Industrial Disputes Act, 1947 — Section 25J
Minimum Wages Act, 1948 — Section 2, 3, 4

Citation : (1963) 2 LLJ 184

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Judgement

B.N. Banerjee, J.—There is a union of bus-owners, in the district 24-Parganae, known as the Gholsapur Bus Syndicate (hereinafter referred to as the syndicate). The petitioner, Shib Prosad Ghosh, was, at all times material to this rule, the secretary of the syndicate and ex officio member of the executive committee of the Syndicate.

2. By an award of an industrial tribunal, dated 20 March 1966, the scale of pay for starters and timekeepers employed by the syndicate was fixed at Re. 87 per month, inclusive of allowances. Thereafter, on 4 July 1959, the respondent State Government reviewed the minimum wages payable to starters and timekeepers, employed by public transport concerns in the district of 24-Parganas, in exercise of its powers u/s 3 of the Minimum Wages Act, 1948, and fixed the same at Rs. 100. This order was published in the Calcutta Gazette on 6 August 1959.

3. Notwithstanding the above fixation of minimum wages, there was an agreement between the syndicate and their workmen, represented by Rashtriya Bus Mazdoor Congress, on 19 August 1959, whereby it was agreed that the starters would get a pay of Rs. 87 per month.

Respondents 3 to 8, who are the employees under the syndicate, filed an application before the District Judge of 24-Parganas, functioning as the authority under the Minimum Wages Act, claiming Rs. 507 as wages being the difference between Rs. 100, fixed as minimum wages by the State Government on 6 August

1959, and Rs. 87, paid as the monthly wages by the syndicate, for the period from 15 October 1959 to 30 April 1960. There was also a claim for compensation made in the said application and he was described as the secretary and the paymaster of the syndicate.

4. The petitioner filed written statement in the said proceeding, inter alia, alleging
- (a) that he was not the paymaster and no order could be made against him;
 - (b) that in view of the award by the industrial tribunal, fixing a rate of wages, no claim under the Minimum Wages Act was maintainable; and
 - (c) the order of review of wages was made according to law.

5. By an order, dated 17 April 1961, the Authority under the Minimum Wages Act allowed the application and directed the petitioner to pay to the applicant employees Rs. 507 as arrears of wages and Rs. 507 as compensation. The reasons which weighed with the authority inter alia, are hereinbelow quoted:

(a) employer" as defined in the Act [Section 2, Clause (e), Sub-clause (iii)], would include in case of an employment, as in question here, the person appointed by the local authority for the supervision and control of the employees or when no person is so appointed, the chief executive officer of the local authority. P.W. 1, Nalini, one of the applicants, proves that Shib Prosad Ghosh is the secretary of the bus syndicate and he manages the affairs of the bus syndicate. It is the secretary who grants leave and takes disciplinary action. It is he who supervises everything. O.P.W. 1, Shib Prosad Ghosh, the secretary, comes to say that he is not the paymaster. There is an executive committee of the bus syndicate which is responsible for all supervision and management. He acts on the authority from the committee. He says that he is not responsible for supervision and control of the petitioners. But he admits in his cross-examination that the committee functions through him in issuing notices, etc., about the conditions of the employment. He also admits that in the articles of association the secretary will have full control over the paid servants of the syndicate. He means to say that that applies to the honorary secretary and not a paid secretary. I am unable to appreciate this contention. He has been properly impleaded as the employer for the purposes of the proceeding under the Minimum Wages Act.

(b) The industrial tribunal fixing the wages has to take into consideration factors which are in a way different from the consideration that prompts the State to fix the minimum wages or in revising the minimum rates of wages periodically under the Minimum Wages Act of 1948 see *Crown Aluminium Works Vs. Their Workmen*, and *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, . As has been observed " No industry has a right to exist unless it is able to pay to its workmen at least bare minimum wages." The minimum wage is the lowest rate at which the members of a specified grade of workers may be legally employed. The words " minimum rate of wages" have

been defined Section 4, of the Minimum Wages Act, 1948. The statutory minimum cannot be affected detrimentally against the employees by any award. The tribunal might have fixed low wages considering the paying capacity of the industry "but the State may have intervened to fix the minimum rate of wages on a consideration of all the circumstances and proceeding on the theory that no industry has a right to exist unless it is able to pay to its workmen at least bare minimum wages. It was decided in *South India Estate Labour Relations Organization v. State of Madras* 1954 I L.L.J. 8 at 14 that the minimum wages fixed under Act XI of 1948 cannot be reduced by the industrial tribunal, " obviously fair wage cannot be anything less than the living wage. The tribunal can increase the minimum rate of wages in a dispute with reference to a particular industry or concern, but it cannot reduce it in the present case the award at the lower rate existing from before has been varied by the statutory minimum wages fixed by the State and not by any unilateral action of the employer or the employees. The claim under the Minimum Wages Act is not therefore barred by the existence of a subsisting award under the Industrial Disputes Act declaring the wages to be Rs. 87 per month while the minimum wages fixed under the statute was subsequently Rs. 100 per month.

6. Regard being had to the limited nature of the argument addressed from the bar, I am not concerned with the other portion of the order by the authority.

7. Mr. Somendra Chandra Bose, learned advocate for the petitioner, urged two points in support of the rule. He contended, in the first place, that there being an award of an industrial tribunal, subsisting between the parties, fixation of wages under the Minimum Wages Act must not be allowed to interfere with the terms of the award and that the authority was wrong in ignoring the terms of the award and in directing the petitioner to pay to its employees the minimum wages as fixed by the State Government. This argument is not well conceived. Section 25J(1) of the Industrial Disputes Act upholds the provisions of the Minimum Wages Act as against the provision of the Industrial Disputes Act and reads as follows:

Effect of laws inconsistent with this chapter.-(1) The provisions of this chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment? (Standing Orders) Act, 1946 (XX of 1946):

Provided that nothing contained in this Act shall have effect to derogate from any right which a workman has under the Minimum Wages Act, 1948 (XI of 1948). of any notification or order issued thereunder

8. That being the position in law, the fixation of wages under the Minimum Wages Act must have precedence over the award of the industrial tribunal to the contrary. The first branch of the argument of Mr. Bose, therefore, must fall.

9. The other branch of argument of Mr. Bose is equally unsustainable. Under the definition of the word " employer" in Section 2(e)(iv) of the Minimum Wages Act

any person responsible to the owner for the supervision and control of the employees or for the payment of wages to them is also an employer. Section 2(e) (iv) is quoted below:

In any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person responsible to the owner for the supervision and control of the employees or for the payment of wages.

10. The authority proceeded on the basis that the syndicate was a local authority u/s 2(e)(iii) and the petitioner was appointed by the local authority to supervise and control the employees and as such was an employer. The authority was no doubt wrong in treating the petitioner as an officer of a local authority. The syndicate, a mere association of bus-owners, is not a local authority and the petitioner is not also an officer appointed by a local authority. Nevertheless, the petitioner satisfies the description of an employer u/s 2(e)(iv) of the Minimum Wages Act, on the other findings arrived at by the authority. The mistake of the authority in invoking the provisions of Section 2(e)(iii) notwithstanding, the order against the petitioner was rightly made. For the reason aforesaid I am not inclined to interfere with the order of the learned District Judge, functioning as the Authority under the Minimum Wages Act. I, therefore, discharge this rule.

11. There will be no order as to costs.