(2008) 08 AHC CK 0116

In the Allahabad High Court

Shree Marwari Seva Sangh APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Constitution of India, 1950 — Article 14
Income Tax Act, 1961 — Section 3
Minimum Wages Act, 1948 — Section 4

Citation : (2008) 4 AWC 4116 : (2008) 119 FLR 683 : (2009) 2 LLJ 74

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Counsel for the petitioner.

2. According to the Counsel for petitioner, "Shree Marwari Seva Sangh" - the petitioner is a registered society managing "dharmashala" and rendering services for stay etc. to the pilgrims, passengers, old people and their attendants without taking any charge from them and there is no business or commercial activities in the dharmashala. The source of Income of the society is donations from charity minded persons and its income is also exempted u/s 80G(5) of the Income Tax Act,

For the first time, by notification dated 30.12.1994 appended as Annexure-11 to the writ petition, minimum wages were fixed for employment in dharmashala except those charging no rent or charging upto Rs. 5 per day as rent, were exempted from the purview of aforesaid notification.

3. It is stated that since no charge/rent is being realised by the petitioner for rendering aforesaid services, it belongs to the exempted category. The petitioner Dharmashala was inspected on 27.5.2008 and against the inspection note dated 27.5.2008 under the Minimum Wages Act, 1948, the petitioner filed a representation dated 2.7.2008 to Labour Enforcement Officer, Varanasi which is

appended as Annexure-10 to the writ petition, inter alia that the society is a charitable society which provide services to the public like free fooding to saints, poor students and helpless down trodden people of the society, extend all sort of" free services in case of famine, other epidemic diseases and other casualties, free medical facilities and arrangements for temporary and permanent stay to pilgrims, old people etc., therefore, it is not covered under U.P. Dookan Avam Vanijya Adhisthan Adhiniyam, 1962.

4. It is urged that by notification dated 30.12.1994 dharmashala was for the first time included in the schedule employment. It was revised vide draft notification dated 4.2.2000 appended as Annexure-12 to the writ petition. By the notification dated 4.2.2000, 26 employments have been included in the schedule employment in which dharmashala is included at serial No. 24. It is stated by the Counsel for petitioner that due to clerical mistake in the draft notification, exemption was not given to the dharmashalas as was given in the notification dated 30.12.1994 and this mistake continued in the final notification dated 24.2.2006 also including dharmashala in the schedule employments without granting any exemption.

5. It is urged that in similar situation a notification dated 31.1.1991 In respect of schools has also been issued in which exemption had been granted to private coaching classes, private schools including nursery school and private technical institutions. This notification has been appended as Anneuxre-13 to the writ petition. The relevant extract of exemption given in the notification dated 31.1.1991 is as under:

In exercise of the powers under Clause (a) of Sub-section (1) of Section 3 read with Clause (ii) of Sub-section (1) of Section 4 of the Minimum Wages Act, 1948 (Act 11 of 1948) and after consulting the advisory board and having considered the objections and suggestions received in respect of the proposals published by Government Notification No. 2903/XXXV1-3-21 (M.W.)-83, dated 13.8.1990, the Government is pleased to fix the minimum rates of wages for employees employed in the employment in private coaching classes, private schools including nursery school and private technical institutions in Uttar Pradesh other than (a) a Madarsa run by Muslim community where no fee or a nominal fee is being charged from the students, (b) a private school run by any religious or charitable institution where no fee or a nominal fee is being charged from the students, (c) a Balbadi run by the U.P. Council for Child Welfare and (d) a recognized private school receiving Government aid.

6. From the reading of extract of the aforesaid notification, it appears that certain educational institutions belonging to minority community and religious or charitable institutions as well as governed or aided by State for welfare for children belonging to weaker Section of the society only which are charging nominal fee or no fee have been exempted from class of establishment to which the Act applies. The exemption Clause shows that Government is sincere towards propagating education amongst poor and down trodden students who are unable

to get proper education, in primary or coaching institutions.

7. Even charitable hospitals have been included in the definition of industry by virtue of decision rendered by the Apex Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, This decision still holds good, therefore, dharmashala run by the society may be for charity and engaged in providing social services and means as stated above, but its employees are not governed by the objects of the society and minimum wages are required to be paid to them.

8. Those objects are of the society running dharmashala and not of its employees, therefore, in my opinion, dharmashala is also an industry and notification can be issued by the Government for bringing it within the schedule employment and minimum wages can be fixed according to the procedure prescribed under the Minimum Wages Act.

9. Counsel for the petitioner has failed to place any document to substantiate his submission that report submitted by the committee constituted for comparative study of minimum wages, was not placed in the meeting of the advisory board and minimum wages was fixed without consultation with advisory board or that there was any clerical mistake in not granting exemption to the petitioner. Therefore, parity cannot be sought with the notification dated 31.1.1991 in which exemption has been granted to private coaching classes, private schools including nursery school and private technical institutions, for benefit of education to next generation.

10. The notification dated 31.1.1991 is for the benefit of society at large by the Government as it also includes Balbadi run by the U.P. Council for child welfare and recognized private school receiving Government aid. It cannot be compared with dharmashala and there is no violation of Article 14 of the Constitution.

11. For the reasons stated above, no case is made out for quashing schedule employment "dharmashala" notified in column 2 at serial No. 24 of Schedule 1 of impugned notification dated 24.2.2006 and the inspection note dated 27.5.2008.

The writ petition is accordingly dismissed