(2001) 02 PAT CK 0065

In the Patna High Court

Case No : C.W.J.C. No. 4185/1991

Smt. Krishna Devi-Devi Prasad Kejariwal Matri Sadan APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 14-02-2001

Acts Referred:

Citation : (2001) 02 PAT CK 0065

Final Decision : Dismissed

Judgement

N. Pandey, J.—This writ petition has been filed for quashing the notification dated September 6, 1990 issued by the State of Bihar in exercise of its power conferred by Clause (a) of Sub-section-(i) of Section 3 of the Minimum Wages Act (hereinafter to be referred to as the Act) fixing the minimum rates of wages as specified in Clause (iii) of the Schedule annexed therewith against each category of employees employed in the ''private hospitals, nursing homes and clinics'' in, the whole of the State of Bihar. A prayer has also been made for quashing the order of the Joint Labour Commissioner dated April 8, 1991 (Annexure 7) and yet another order dated May 3, 1991 (Annexure 8) whereby while rejecting the representation of the petitioner, a direction was issued for implementation of the notification with respect to the employees of the petitioner-hospital.

2. In short, the case of the petitioner is that Krishna Devi-Devi Prasad Kejariwal Matri Sadan, Muzaffarpur is a charitable institution established under a trust deed duly registered under the Indian Registration Act. Therefore, the impugned notification fixing the minimum wages with respect to different categories of employees in the specified schedule will not be applicable to the employees of the instant hospital. In fact, the hospital in question is being run for charitable purposes without any profit motive and is not utilised for the benefit of a private individual. Hence keeping this aspect under consideration, even the Income Tax Department had granted exemption u/s 22A of the Income Tax Act. Similar exemption was also granted by the Labour Court, Muzaffarpur with regard to the

applicability of Bihar Shops and Establishments Act. It was held that from a bare reference to the trust deed, it would be apparent that the object of the trust was purely charitable to grant relief to the poor as well as medical relief. Therefore, in view of the provisions of Section 4 of the said Act, a charitable institution was entitled to full exemption.

3. A grievance was also made although on receipt of the notice u/s 5(1)(b) of the Act regarding proposal for fixation of minimum wages, an objection was filed well within time before the Deputy Labour Commissioner for grant of exemption regarding applicability of the Act but the said objection was rejected summarily by the Joint Labour Commissioner even without holding any inquiry and granting an opportunity to the petitioner to establish her case, That apart, from a reference to the said Act, it would appear that no reason was assigned to justify under what circumstances the institution in question was not entitled for exemption.

4. Apart from what has been stated above, it was further contended by the learned counsel that from a bare reference to the provisions of Section 3 of the Act, it would appear that rates of minimum wages can be fixed by the appropriate Government only with respect to the employees of which establishment has been specified in Part II or Part III of the Schedule, and or in an employment added by notification u/s 27. While referring to item 35 of the schedule appended with Part II of the Schedule as published, u/s 2(g) and 27 of the Act, it would appear that only employments in private hospitals, nursing homes and clinics have been included. Thus, unless and until, charitable hospitals which are run for public purposes are included in the schedule, the provisions of the Act are not applicable to the employees working under such (institution.

5. On behalf of the State it was contended that the object of the Income Tax Act to realise taxes on the income from the private trust or charitable trust or it may be public trust. Likewise the object and the applicability of the provisions of the Bihar Shops and Establishments Act to such institution are also quite different to that of the applicability and implementation of the provisions of the Minimum Wages Act. Simply because the institution in question was granted exemption under the Income Tax Act, or with regard to the applicability of the Bihar Shops and Establishments Act, it would not be proper to take a plea that similar exemption is required to be granted under the Minimum Wages Act. Because, this is not the case of the petitioner that the employees of this hospital are working purely for the purpose of charity and they are not paid their remuneration.

6. It was further contended that the notification of the State Government prescribing rates of Minimum Wages should not be lightly interfered with by this Court in exercise of the power under Article 226 of Constitution. Because from the facts of the present case, it would appear that prior to issuance of the impugned notification, the Government had already constituted the Bihar

Minimum Wages Advisory Board and also a committee to examine all the pros and cons and to consider the objections/representations, if any against the proposed revision. The notification in question was issued only after considering the report of the Board and the Committee.

7. In my view there cannot be any dispute that private trust is distinguishable from the public trust. Such distinction depends upon the character of the person for whose benefit they are created. The essential difference between the private trust and public trust is that in the former beneficiaries are defined and ascertained individuals or who within a definite time can be definitely ascertained. But in the latter, the beneficial interest must be vested in an unascertained and fluctuating body of persons, either the public at large or some considerable portion of it. Reference in this regard can be usefully made to a decision in the case of Shanti Devi Vs. State and Others, wherein it was observed in these words:- "The distinction between a private and a public trust is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. While in the former the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of ascertainment."

8. The claim of the petitioner is that in the instant case, the trust deed was executed wholly for charitable purposes for the benefit of the general public. Therefore, it cannot be said that the hospital in question, which is being run by such trust, is for private purposes and for the benefit of an individual. True it is in the schedule appended to Part II prepared under Sections 2(g) and 27 of the Act, employment in any private hospital and nursing house has been included. But unless and until there is sufficient material and evidence on record that the object of the hospital in question is different from those of hospitals and nursing homes, as notified in Schedule 2 of Part II, it would be difficult to exclude the applicability of the provisions of the Minimum Wages Act. Significantly, it is also to be noticed that this is not the case of the petitioner that employees employed in this hospital are working for charitable purposes without charging any wages.

9. Apart from what has been noticed above, this also should not be undermined that simply because the institution in question was granted exemption under the Income Tax Act or under the provisions of the Bihar Shops and Establishments Act, it would not be proper to grant similar exemption with regard to the applicability of the instant Act. There may be cases where hospitals are run without any income or profit motive. Naturally the provisions of the Income Tax Act cannot be enforced unless there is ascertained income to the private individual. Similarly, the decision of the Labour Court with respect to a case under the provisions of Bihar Shops and Establishments Act will also not add any force to the contention of the petitioner because from a bare reference to Clause (2) of Section 4 of the Bihar Shops and Establishments Act, it would appear that the provisions of the said Act specified in the third column of the Schedule shall not apply to the employees and other persons referred to in the corresponding

entry of the second column. Entry 2 of the Schedule shows that the establishment working for treatment or for the care of the infirm, sick, destitute or mentally unfit is exempted from the applicability of the provisions of the said Act. But under the provisions of the Minimum Wages Act, no such exemption has been prescribed.

10. Coming to the other aspect there is no doubt that the Joint Labour Commissioner before rejecting the objection of the petitioners, should have held at least a preliminary inquiry and assign reasons for rejecting the representation. But as would appear from the facts on record, the impugned notification prescribing minimum wages was published as back as in the year 1990. Therefore, after expiry of ten years, it would not be proper to interfere with such notification at this stage. It cannot be overlooked that the legislation in question is a welfare legislation undertaken by the State under its directive Policy. Therefore, such action should not be struck down for mere technicalities. No doubt, an attempt was made to draw a line between the purpose of a private trust and charitable trust. But this is not the case of the petitioner that the workmen employed under the establishment in question are working for charitable purposes without any wages. If they are paid wages they must be paid the minimum wages as prescribed by the Government.

11. In the result, for the reasons stated above, we are unable to subscribe to the views expressed by the learned counsel for the petitioner. Accordingly, this writ application fails and is hereby dismissed but without costs.

I.P. Singh, J.

12. I agree.