
(1998) 08 MP CK 0037

In the Madhya Pradesh High Court

Case No : M.P. No. 1442 of 1989

St. D. Saraswati Shaikshanik Samiti and Others

APPELLANT

Vs

Additional Labour Commissioner and Others

RESPONDENT

Date of Decision : 25-08-1998

Acts Referred:

Minimum Wages Act, 1948 — Section 3, 5

Citation : (1999) 81 FLR 728 : (1999) 2 LLJ 402

Hon'ble Judges : Deepak Verma, J

Bench : Single Bench

Advocate : A.M. Mathur and Shrivastava, for the Appellant; Sekhar Bhargava, A.A.G. and S.H. Sen, for the Respondent

Judgement

Deepak Verma, J.—In this petition filed under Articles 226/227 of the Constitution of India petitioner is challenging the propriety, correctness and legality of Annexure P-2 dated July 21, 1989 issued by Additional Labour Commissioner, Indore and Annexure P-3 dated October 25, 1989 issued by District Education Officer, Ujjain. By these two orders respondents have directed the petitioner to comply with the provisions of the Minimum Wages Act (for short the Act), 1948.

2. Brief facts, material for deciding this petition may be enumerated as under: Petitioners are Societies registered under the provisions of M.P. Society Registrikaran Adhiniyam, 1973. The petitioner Societies are running schools within the district of Ujjain. These are all non-Government unaided schools, meaning thereby that they are not receiving any grant-in-aid from the State Government.

3. The main contention of the petitioner is that they are not Commercial Establishments, which would cover them under the Notification issued by the State Government in the year 1960, published in M.P. Gazette on August 26, 1960, which was renumbered in the second notification issued in the year 1986 published in M.P. Law Times, Part II, Item No. 60 at page 100 dated March 3,

1986. The relevant Entry No. 10 of 1986 Notification is reproduced herein below:
Notification No. 4(e)-1-84-XVI-A dated March 3, 1986.

** ** *

** ** *

10. Employment in any shop, commercial Establishment other than that covered under any of the other entries in this Schedule, Residential Hotel Restaurant or Eating House. Theatre or any other place of public amusement or entertainment.

Explanation: For the purpose of this entry the expression "Shop" "Commercial Establishment" Residential Hotel, "Restaurant or Eating House" and "Theatre" shall have the same meaning as assigned to them in the Madhya Pradesh Shops and Establishments Act, 1958 (No.25 of 58).

Since the explanation of the said entry covering the expressions "Shops" "Commercial Establishment", "Residential Hotel", Restaurant or Eating House" and "Theatre" was given the same meaning as assigned to them in the M.P. Shops and Establishments Act, 1958 another notification revising the rates of minimum wages was issued by the State Government on June 11, 1987 published in 1987 M.P. Law Times Part II at page 125. Entry No. 14 which finds place at page 140 of the said Notification covers "Commercial Establishment" revising the minimum wages payable to the employees.

4. Shri A.M. Mathur, learned senior counsel, has submitted the following three grounds of attack and praying for quashment of the impugned orders Annexures P-2 and P-3:

(1) Education Institutions are not covered under item No. 10 of Notification issued by State Government in the year 1986 nor the same can fall under the M.P. Shops and Establishments Act, 1954.

(2) u/s 3 of the Minimum Wages Act, 1948 State Government alone has the power to fix the minimum wages.

(3) Procedures for fixing the minimum wages is provided in Section 5 of the Minimum Wages Act, which has since been not followed, therefore, Annexures P-2 and P-3 deserve to be quashed.

5. Respondents have submitted their return in opposition. Their contention is that it cannot be disputed that petitioners are carrying on "commercial activities" even though they may be imparting education to students. Their further contention is that they are charging fees from the students who are prosecuting their studies in the Schools run by the petitioner Societies. Therefore, their activities are nothing but commercial activities. It has further been submitted that Entry 10 of the Notification of 1986 would squarely cover the commercial activities. Accordingly, the revised minimum wages payable to the employees of such institutions who are engaged in commercial activities would be payable to

all such employees so as to meet the purpose for which the Minimum Wages Act has been enacted. It has also been submitted that in this view of the matter the petition deserves dismissal as the minimum wages have been fixed after following the procedure as prescribed u/s 5 of the Minimum Wages Act.

6. I have heard the learned counsel for the parties and perused the record.

7. At the outset learned Addl. Advocate General Shri Sekhar Bhargava submitted to this Court that the petition deserves to be dismissed on the short ground that it is premature. According to him so far no orders have been passed which could have given rise to the petitioner to approach this Court challenging the same. According to him since the Notification was issued in the year 1960 and again in 1986, the Addl. Labour Commissioner in his wisdom thought it fit to direct the Deputy Labour Commissioner, Assistant Labour Commissioner and Labour Officer to implement the said Notification in its right perspective. Pursuant thereto the District Education Officer, Ujjain has issued letter Annexure P-3 dated October 25, 1989. According to him this is not an order but only an intimation that the provisions of Minimum Wages Act are made applicable to the Educational Institutions also as the same are being treated as Commercial Establishments. He further contended that if the petitioner had so desired they could have very well approached the District Education Officer respondent No. 3 herein to show cause that their institutions are neither carrying on commercial activities nor would be covered under the Act or under the Notifications issued by the State Government from time to time. Without doing so they have approached this Court in post-haste manner. He further submitted that in fact nothing is lost to the petitioner even now and if they so desire they can still convince the Authority concerned i.e., respondent No. 3 that petitioners' activities are not such which would be covered under the "Commercial Activities" as envisaged under the Notifications issued by the State Government in the year 1960 and again in the year 1986 and if the Authority is convinced, then the matter would come to an end there itself.

8. Shri A.M. Mathur, learned senior counsel, at this stage submitted that if this is the import of Annexure P-3 then the petitioner would like to approach the respondent No. 3 and satisfy him that their societies would not be covered under the "Commercial Activities" as per the Notifications issued by the State Government from time to time. Therefore, at this stage, without entering into further details or merits of the matter, I deem it fit to direct the petitioners to approach respondent No.3 within a period of 30 days hereof and to move an appropriate representation taking all grounds that may be legally available to them and to satisfy the Authorities concerned i.e., respondents No. 2 and 3, as the case may be to satisfy them that petitioner Societies are not carrying on any commercial activities and accordingly, would not be covered under the Notifications. Let the representation be filed within a period of 30 days hereof positively. If no representation is filed by any of the petitioners within the said period, then no further time would be granted by respondents No. 2 and 3 in this

regard. On such representation being filed by the petitioner, it is expected of the parties concerned to consider and dispose of the same as expeditiously as may be possible and preferably within a period of 3 months, in accordance with law assigning reason, while disposing of the said representation.

9. With the above observations this petition stands finally disposed of, but with no order as to costs. Security cost shall be returned to the petitioners after due verification. The Registrar is directed to forward a copy of this order to Respondents No. 2 and 3.