(1987) 02 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13563/85

Tallam Sreeramamurthy APPELLANT

Vs

The Authority Under Minimum Wages Act, 1948, Guntur and Another RESPONDENT

Date of Decision : 16-02-1987

Acts Referred:
Minimum Wages Act, 1948 — Section 20(3)

Citation : (1989) 2 LLJ 241

Hon'ble Judges : Y.V. Anjaneyulu, J

Bench : Single Bench

Judgement

1. The petitioner herein seeks a Writ of Certiorari to quash the order of the Authority under the Minimum Wages Act, Guntur Region, Respondent No. 1 herein in M.W. Case No. 69/85 dated 17th October 1985.

2. The petitioner carries on business in processing the raw tobacco entrusted to him. It is said that the petitioner is engaged only in grading of the tobacco. M/s Molisetti Somasundaram (P) Ltd., entrusted tobacco to the petitioner for purpose of grading. After completing the process of grading the petitioner returns the graded tobacco to the suppliers. He charges majuri (or wages) for the work done by him.

3. For the aforesaid purpose the petitioner employed a large number of workers. It is stated that as many as 400 persons are employed by the petitioner and at any point of time not less then 300 persons attend to the work of grading of the tobacco.

4. The wages payable to the workers engaged in processing the tobacco are fixed by the Government of Andhra Pradesh under the Minimum Wages Act, 1948 (hereinafter referred to as ''the Act''). The minimum wages were fixed from time to time. The relevant notification conferring the payment of wages in the present case is G.O. Ms. No. 467, dated 7th July 1982, according to which the minimum

wages payable to graders, stammers, scrap cleaners, etc. were fixed at Rs. 10-12 per day. In the year 1985 this was the prevailing minimum wages payable to workman. Authorities appointed under the Minimum Wages Act oversee the implementation by the businessmen of the payment of minimum wages according to the orders of the Government from time to time. One of the basic duties of the authorities is to ensure that there is no exploitation of the labour which is largely unorganised, illiterate and gullible. For achieving the aforesaid purposes Labour Officers including Assistant and Dy. Commissioners of Labour frequently visit the premises where workmen carry on their work, make enquiries and ensure that the employers pay the entire minimum wage according to the order of the Government from time to time.

5. During one of such official visit an Asst. Labour Officers visited the petitioner''s premises on 10th July 1985. On enquiries he found that the petitioners was not paying to the workmen the minimum wage according to the Government order dated 7th July 1982. It was found that the petitioners was paying amounts which were far less. The Labour Officers seized the books of account and other registers for taking appropriate action. The Labour Officers promptly reported the matter to the Ist respondent who is the authority under the Minimum Wages Act (a Deputy Commissioner of Labour). Pursuant to the report a notice was issued on 5th August 1985 in case No. 69/85 requiring the petitioner to show cause why he should not be directed to pay the short-fall of wages in addition to ten times the short-fall by way of compensation as claimed by the Assistant Labour Officer, respondent No. 2 herein in the claim petition filed by him. The petitioner was required in the notice to appear before respondent No. 1 on 16th August 1985. It is said that this notice was served on the petitioner on 15th August 1985.

6. On 16th August 1985 the petitioner appeared before respondent No. 1 and admitted that the minimum wage was not being paid to the workers. The reason given was that the petitioner came into business only in April, 1985, he was not familiar with the minimum wage rate as fixed by the Govt. in Govt. Order dt. 7th July 1982 and consequently he was paying to the workmen the wages at the rate existing prior to the Government order dt 7th July 1982. As there is no dispute that the workmen were not paid the minimum wage the petitioner undertook to pay the same by a demand draft

7. After giving the above undertaking before respondent No. 1 the petitioner also appeared before respondent No. 2 on 16th August 1985 and made representation that several workmen started pressurising him to pay the differential amounts and consequently he was obliged to issue cheques in favour of one of the workmen on 12-8-1985 on the Indian Overseas Bank, Kopparru Branch. It is claimed that through cheques, the petitioner paid a total sum of Rs. 26,530/-. The petitioner therefore asked for permission to deposit the balance amount.

8. The enquiry proceeded before respondent No. 1. The principal claim of the petitioner was that the amount of Rs. 26,530/- allegedly paid to the workmen by

cheques issued on 12th August 1985 should be deducted from out of the short-fall of minimum wages amounting to Rs. 34,297-36. The claim was rejected by respondent No. 1 principally holding that in the facts and circumstances there were strong grounds to presume that the amounts paid by cheques to the workmen found their way back to the petitioner. Respondent No. 1 therefore declined to accept the petitioner''s claim for the set off the sum of Rs. 26,530/- and required the petitioner to pay the entire short-fall of minimum wages to the extent of Rs. 34,297-36. The petitioner was accordingly required to pay a total sum of Rs. 1,02,892-08 by the order of respondent No. 1 dated 17th October 1985. This order of respondent No. 1 is challenged in the present writ petition.

9. I have heard the learned councel for the petitioner Shri. P. L. N. Sarma and the Government Pleader. Sri Sarma, learned councel, reiterated the contention that in the facts and circumstances the sum of Rs. 26,530/- paid by the petitioner through cheques to the various workmen should be deducted and only the balance amount of short-fall in the minimum wages demanded. The grievance of the petitioner is that respondent No. 1 ought to have made an enquiry into the petitioner''s claim that in all a sum of Rs. 26,530/- had been paid to the workmen and without making any such enquiry it was not open to respondent No. 1 to reject the claim of the petitioners. It is urged by the learned councel for the petitioner that respondent No. 1 failed to elicit even from a single workman regarding the payment of wages and there was no evidence before respondent No. 1 that the amount paid through cheques by the petitioner to the workman found their way back to the petitioner''s pocket. It is stated that the aforesaid conclusion of respondent No. 1 is not based on any evidence but it purely the result of suspicion entertained by respondent No. 1. Learned councel further stated that in the facts and circumstances no compensation should have been demanded. The petitioner acted bona fide. The reason for non-payment of the minimum wage fixed by the Government order dated 7th July 1982 was that the petitioner was not previously in business and he entered into business only in April, 1985. According to the learned councel for the petitioner, respondent No. 1 ought to have exercised the discretion to levy compensation u/s 20(3) of the Act judiciously and reasonably. In the present case it is claimed that respondent No. 1 acted arbitrarily in calling upon the petitioner to pay compensation determined at twice the amount of the short fall of wages. Learned counsel, therefore, commended to this court that the order of respondent No. 1 deserves to be quashed.

Learned Government Pleader contends that respondent No. 1 acted absolutely fair in the facts and circumstances of the petitioner''s case. It is pointed out that the petitioner not being in business prior to 1985 could not have been aware of the minimum wage rate paid to the workmen prior to 1985. Learned Government pleader submits that the explanation offered by the petitioner is too naive to be accepted. It is further urged that the conduct of the petitioner is totally reprehensible in the sense that after the failure to pay the minimum wage was detected he resorted to the device of making payment to illiterate workmen through cheques.

This was done, according to the learned Government Pleader, for the ostensible purpose of advancing a claim that some amounts had been paid by cheques. It is submitted that in the facts and circumstances the inference that these monies allegedly paid by the petitioner to workmen found their way back to the petitioner is irresistible. It is further submitted that respondent No. 1 exercised the discretion properly and judiciously in levying compensation which is twice the amount of minimum wage short paid. The seriousness and the gravity of the offence, urged the learned Government pleader, fully justified the levy of the compensation.

10. I have not the slightest hesitation in agreeing with the submissions of the learned Government pleader. The facts eloquently speak for themselves in the present case. Far from being a person acting honestly, the facts would indicate that the petitioner tried to abuse the process of law by creating evidence that wages were paid through cheques to the workmen after detection by the authorities concerned. It is not denied that all the workers are illiterate and none of them has a bank account. The payment of wages to workmen through cheques is unknown because the workmen cannot go through the ordeal of realising the cheques through their respective bank accounts. It is usual trade custom to make the payment of wages across the payment desk in cash and obtain the acquittance of the workmen. It the petitioner intended to act bona fide and with any sense of honesty, the least that he should have done was to go to the authorities (whether Assistant Labour Officer or the Deputy Labour Commissioner) and represent to them that after the matter regarding the non-payment of minimum wages was detected by the authorities the workmen were pressurising for the payment and seek the assistance of the authorities concerned to make the payment. Nay; the petitioner would not take recourse to this honest way of dealing ! On the contrary he takes recourse to an extreme practice of issuing cheques to hundreds of workmen. Admittedly the cheques are all bearer cheques which are cashed across the bank counter. The petitioner failed miserably to place any evidence before respondent No. 1 that the cheques issued were encashed across the bank counter by the workmen. As rightly urged by the leaned Government Pleader it is not a matter for enquiry by respondent No. 1. It is a matter for petitioner and the petitioner alone to set up an appropriate claim before respondent No. 1 and lead necessary evidence in support of the contention that amounts were paid. It was entirely for the petitioner to produce the alleged recipients of the monies and establish his case that the respective workmen did receive the payments. The petitioner would not do any such thing during the course of enquiry except filing a statement before respondent No. 1 showing the details of monies paid to the various workmen by cheques. Respondent No. 1 is under no obligation to unilaterally enquire into the matter unless the petitioner requires respondent No. 1 to make an enquiry and adduces appropriate evidence. There is not a shred of evidence in the present case in support of the claim that any part of the monies allegedly paid by

cheques by the petitioner reached the workmen. It is not possible to say that respondent No. 1 acted unreasonable or arbitrarily in drawing the conclusion that the amounts claimed to have been paid by cheques by the petitioner to the workmen found their way back to the petitioner. It my opinion that is the only inference that can be drawn from the facts. Having regard to all the facts and circumstances I am satisfied that respondent No. 1 was fully justified in rejecting the claim of the petitioner to reduce the claim on account of minimum wages to the extend of Rs. 26,530/- allegedly paid by him to the workmen by cheques.

11. The next question that falls for consideration is whether the facts would justify the levy of compensation. As already stated the petitioner was called upon to pay compensation equal to twice the amount of minimum wage short paid. The writ petitioner is undoubtedly guilty of exploiting the unorganised illiterate workmen for his own benefit. What is most distressing in this case is that even after the petitioner was caught in the act of not paying to the labour the minimum wage he tried to circumvent the law by creating a device of payment bay bank manipulations. The petitioner had not shown the slightest regard for the truth and honest way of dealing with the labour at whose expense he was prospering. The endeavours of the State to ensure payment of minimum wages to workmen is for achieving a salutary social purpose. If employers should be allowed to get away without payment of the minimum wages to the workmen It would inspire no confidence in the labour who work hard day-in and day-out for the benefit of its employer. It would not inspire any confidence in the society either in the sense that a hopelessly corrupt practice like the one in the present case could not be checked by a Government wedded to advancing the cause of workmen. In a welfare State the interests of the workmen are paramount. The methods adopted by the petitioner in this case fully justified levy of compensation by respondent No. 1. The petitioner should consider himself to be lucky that he was let off with the levy of compensation equal only to twice the amount of the minimum wages. A case like this needs a deterrent penalty and I am unable to say in the facts and circumstances that the compensation of Rs. 68,594-72 levied by respondent No. 1 is either arbitrary or excessive.

12. I find absolutely no merit in this writ petition and it is accordingly dismissed with costs. Advocate''s fees Rs. 300/-

