

(2003) 01 MAD CK 0107

In the Madras High Court

Case No : Writ Petition No. 10476 of 1997 and W.M.P. No's. 16730, 22139 and 22140 of 1997

The Commissioner, Thirukkazhukundram Panchayat Union

APPELLANT

Vs

Authority appointed undertaking the Minimum Wages Act, (Deputy Commissioner of Labour II), K.A. Harikrishnan, K. Natarajan, K. Madhakaran, N. Durai, N. Siva, N. Lakshmikandhan, K. Gopal, K. Natarajan, K. Dhanasu, G. Ponnusamy, P. Muthu, K. Baskaran, S. Raman, Muthukrishnan, A. Chinnasamy, K. Chinnadurai, G. Radhakrishnan, G. Balan, K. Sabapathy, R. Raman, M. Renganathan, V. Ramachandran, T.K. Tharuman, V. Elumalai, K. Madhurai, E. Nagappan, S. Munusamy, R. Chellappan, T. Chinnapaiyan, K. Munusamy, K. Adhimoolam, K. Radhakrishnan, R. Murugesan, V. Vadivel Naicker, G. Parasuraman, A. Kesavan, S. Chockalingam, R. Kannappan, S. Venugopal, Muthial Reddiar, C. Munusamy, E. Ekambaram, M. Lingam and M. Parthasarathy

RESPONDENT

Date of Decision : 30-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 97 FLR 715 : (2003) 2 LLJ 352

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : V. Raghupathi, for the Appellant; D. Malarvizhi, GA for R1 and R. Balasubramanian in WMP No. 22139 of 1997, for the Respondent

Final Decision : Allowed

Judgement

E. Padmanabhan, J.—The writ petitioner, the Commissioner of Thirukkazhukundram Panchayat Union, has prayed for the issue of a writ of certiorari calling for the proceedings of the first respondent dated 5.1.96 made in M.W. Case NO. 14/95 and quash the same.

2. Heard learned counsel appearing for the writ petitioner, Ms. D. Malarvizhi, learned government Advocate appearing for the first respondent and

Mr. R. Balasubramanian, learned counsel appearing for some of the proposed respondents in WMP No. 22139 of 1997.

3. Respondents 2 to 45 moved the first respondent for a direction to pay the minimum wages in terms of Section 20(2) of The Minimum Wages

Act, 1989. The 44 part-time overhead tank operators of various Panchayats moved the petition for direction to pay minimum wages, while

complaining that they are being paid far less than the minimum wages notified by the State Government. The first respondent, overruling the

objections raised by the writ petitioner, directed payment of minimum wages. Being aggrieved, the present writ petition has been filed.

4. The contesting respondents have not chosen to appear despite service. The writ petitioner has also taken out an application to implead the

respective Panchayat, who is the employer of the over head Tank operator. In the said application for impleading, notice has been ordered and on

behalf of some of the Panchayats, Mr. R. Balasubramanian has entered appearance and others have not chosen to appear.

5. Respondents 2 to 45 are overhead tank pump operators appointed or engaged by the respective Panchayat, who is the employer. But without

impleading the employer, the said respondents have moved the application for direction before the first respondent as if the Panchayat Union

Commissioner is the employer and he is liable to pay the minimum wages. This is totally a misconception. Without impleading the employer atleast

as a formal party, namely, respective Panchayats by whom respondents 2 to 45 are engaged as Panchayat overhead tank operators, they cannot

maintain an application for direction to pay minimum wages, assuming that the minimum wages notification applies. Without impleading the

employer, an application for direction to pay the minimum wages is not maintainable, which the first respondent has lost sight of.

6. Assuming for the purpose of argument that for the Panchayats there is no elected body, but for each Panchayat a Special Officer has been

appointed in the place of elected body. By merely impleading the Panchayat Union Commissioner, the inherent defect cannot be cured. Atleast the

Panchayat represented by the President or the Special Officer for the time being in office should have been impleaded. The failure to implead the

Panchayat, who is the employer, is fatal and on this ground the first respondent should have dismissed the application for direction to pay the minimum wages.

7. That apart, it is rightly pointed out by counsel for petitioner that respondents 2 to 45 are only part-time panchayat overhead tank pump operators and, they are not pump drivers as sought to be suggested. The Minimum Wages Notification apply to pump drivers and not to part-time panchayat overhead tank pump operators.

8. In this respect, the attention of this Court is drawn to the order passed by P. Sathasivam, J., in TAMIL NADU ORATCHI ONRIYA VISAI

PAMPU IYAKKUNARGAL SANGAM VS. COLLECTOR OF SOUTH ARCOT DISTRICT dated 9.9.97 in W.P. No. 18100 of 1992. P.

Sathasivam, J., after elaborate consideration held that G.O. Ms. No. 449 Labour and Employment Dept., dated 6.6.1977 has no application as

Panchayat overhead tank pump operators are not pump drivers and panchayat of overhead tank pump operators engaged by the Panchayat are

not covered by the Minimum Wages Notification. P. Sathasivam, J., held thus :-

8. I have considered the rival submissions. With regard to the first submission that the members of the petitioner-Sangam are full time employees

of various panchayats, admittedly there is no order stating that the members of petitioner-Sangam were appointed as full time employees. It is the

contention of learned counsel for the petitioner that in the absence of any reference in the appointment order or in the impugned order, the

members of the petitioner-Sangam are only full time workers of respondents 3 to 37. In order to consider the above contention, it is useful to refer

to an order of official appointment, I am reproducing hereunder the order of appointment made in one case, thus:-

After reading the above order, in the absence of any other material, I am unable to accept the contention of learned counsel for the petitioner that

the members of the petitioner-Sangam were appointed as full time workers by respondents 3 to 37. As rightly pointed out by learned counsel for

respondents, these persons were asked to look after the water tank. In other words, they have to fill up water in the water tank and according to

learned counsel for the respondents, they have to spend 2 to 3 days per day. As a matter of fact, in the counter affidavit filed by the 1st

respondent, the nature of employment is explained in detail. In such circumstances, in the light of the detailed explanation offered by the 1st

respondent in the counter affidavit, I am unable to accept the argument of learned counsel for the petitioner-Sangam, that the members of the

petitioner-Sangam were appointed as full time workers.

9. With regard to the applicability of the notification issued under the provisions of the Minimum Wages Act, learned counsel for the petitioner,

relying on the annexure to the notification in G.O.Ms. No. 449 dated 6.6.1977 and by referring to item No. 9 in Grade I (found at page 7 of the

typed set), contended that the members of the petitioner-Sangam are governed by the notification and consequently they are entitled to the

minimum wages as fixed in the notification. For this learned counsel for the respondents submitted that item No. 9 referred to at page 7 of the

typed set relates only to persons who attend repair work and not to members of the petitioner-Sangam. This also has been properly explained in

the counter affidavit. It is not the case of the petitioner-Sangam that its members are attending to repair work also. No doubt, learned counsel for

the petitioner has brought to my notice that as per the proceedings of the Commissioner of Melmalayanur Panchayat Union in Na.Ka. No.

1084/92 they have to attend 18 types of works. Relying on the said proceedings, learned counsel for the petitioner submitted that if the works

mentioned in the said proceedings are to be attended by them, it will take more than 6 or 7 hours. In view of the vehement contention by learned

counsel for the petitioner, I have carefully perused the directions of the Commissioner in the said proceedings. After going through the said

conditions, I am unable to accept the argument of learned counsel for the petitioner since all the abovesaid works are interconnected. As a matter

of fact, it is specifically pleaded in the counter affidavit filed by the 1st respondent that the members of the petitioner-Sangam are designated as

overhead water tank pump operators and it is not correct to state that they are pump drivers and eligible for the wages prescribed for skilled

Grade I workers as per G.O.Ms. No. 449, Labour and Employment dated 6.6.1977. As per the provisions of Tamil Nadu Panchayats Act and

particularly as per Section 57(3) thereof, the 1st respondent, being the Inspector of Panchayats, is competent to issue directions such as revision of

wages, etc. It is explained in the counter affidavit that on the representation of the members of petitioner-Sangam, their wages have been increased

in the following manner:-No doubt, learned counsel for the petitioner contended that the fixation of wages at Rs.120/- to some persons and

Rs.150/- to others is discriminatory and there is no basis for such classification. A mere reading of the said classification as shown in the impugned

order clearly shows that if a person has to look after one water tank, then he will be paid Rs.120/- per month and if he has to look after two water

tanks, he will be entitled to Rs.150/- per month. In such circumstances, a plain reading of the impugned order makes the position clear and I am

unable to accept the contra argument made by learned counsel for the petitioner.

10. If the petitioner-Sangam has any grievance with regard to the payment of wages or with regard to the classification, it is always open to them to

approach the competent Authority or the Government or resort to the competent provisions of the Act to settle their grievance. It is not possible

for this Court to go into the grievance of the petitioner-Sangam. Apart from this, I am satisfied that there is no truth in the contention of the

petitioner, particularly in the light of the details furnished by the 1st respondent in the counter affidavit.

I am in respectful agreement with the view taken by P. Sathasivam, J.

9. In the result, this writ petition is allowed and the impugned proceedings of the first respondent is quashed not only on the ground that the

employer has not been impleaded as a party in the proceedings before the first respondent, but also on the ground that the notification referred to

by the respondents 2 to 45 will have no application to Panchayat Part-time Overhead Tank Pump Operators and, therefore, they cannot maintain

an application before the first respondent.

10. In the result, this writ petition is allowed and the impugned proceedings of the first respondent is quashed. The parties shall bear their

respective costs. Consequently, WMP Nos. 16730 and 22140 of 1997 are also dismissed and WMP No. 22139 of 1997 to implead proposed

respondents is closed.