
(2008) 12 MAD CK 0137

In the Madras High Court

Case No : Writ Petition No's. 16970 and 16971 of 2008

The Management of Bailey Hydropower Pvt. Ltd.

APPELLANT

Vs

The Dy. Commissioner of Labour - II, (Authority under the Minimum Wages Act) and Chennai Yettrumathi Valaga Uzhiyargal Matrum Pothu Thozhilalar Sangam

RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

Limitation Act, 1963 — Section 5

Minimum Wages (Central) Rules, 1950 — Rule 25

Minimum Wages Act, 1948 — Section 12, 12(1), 18, 2, 20

Citation : (2008) 12 MAD CK 0137

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : A.L. Somayaji for T.S. Gopalan and Co, for the Appellant; N. Senthilkumar, Addl. Govt. Pleader R1 and N.G.R. Prasad for Row and Reddy R2, for the Respondent

Judgement

R. Banumathi, J.—W.P. No. 16970/2008 has been preferred against the order in M.W. Case No. 59/2007 directing Writ Petitioner Management to pay minimum wage arrears of Rs. 37,01,663.61 from November 2000 to March 2007 and ordering payment of penalty of Rs. 3,70,16,636.10 and total payment of Rs. 4,07,18,229.71.

2. Challenging the order in MW IA. No. 4/2007 condoning the delay of 2162 days in filing the Petition for Minimum Wages, W.P. No. 16971/2008 is filed.

3. As both Petitions involve common points, both Writ Petitions are stand disposed of by this Common Order.

4. Background facts which led to the filing of Writ Petitions are as follows:

(i) In the year 2000, Writ Petitioner Management put up a factory at Irrungattukottai, SIPCOT Industrial Park, Sriperumbudur Taluk, Kancheepuram District for manufacture of Hydraulic Cylinders and its components. It is an

export oriented unit and the production activities were commenced some time in the last quarter of 2000.

(ii) According to the workmen represented by 2nd Respondent Union about 250 labourers working in Bailey Hydro Power Pvt. Ltd., manufacturing Hydraulic Cylinders for 100% export situated in SIPCOT Industrial Park, No. 10, Sriperumbudur, Irrungattukottai, Kancheepuram District from 2000 onwards.

(iii) Case of the workmen is that company manufacturing Engineering goods and the workers are paid less wages than the minimum wages and even though it was brought to the notice of the management and demanded payment of minimum wages under the Act, they continued to pay less wages than the minimum wages. Management even after demand did not pay the minimum wages. Writ Petitioner Management has not provided minimum wages as per G.O. No. 1050 dated 03.8.1995 and G.O.(2D) 17 Labour & Employment dated 23.4.2002 and also not provided proper food facilities. As per the contention of the Writ Petitioner, 59 workmen are working directly under the Writ Petitioner, 74 workmen worked through the labour contractor Esseness Engineering Service.

(iv) All the workmen had become members of Chennai Export Zone Workers and General Workers Union. On 27.3.2007 with a delay of 2162 days, 2nd Respondent workmen prayed for payment of arrears of maintenance and also as per Section 20(3) of Minimum Wages Act (for short MW Act), they prayed for 10 times the amount of difference as compensation.

5. Writ Petitioner Management opposed the Minimum Wages Petition contending that in respect of 74 workmen, Management had obtained certificate for appointing contract labour direct through Esseness Engineering Services and that the contract with the firm had expired on 30.6.2003. Those 74 workmen worked in Esseness Engineering Services had resigned in June 2003 and all have entered into service under the Writ Petitioner from 01.7.2003 as temporary workmen. According to the Writ Petitioner Management for the period prior to July 2003 these workmen had left the work from the previous employer Esseness Engineering Services from 01.7.2003 and settled PF account.

6. It is the further case that insofar as employees directly appointed by the Writ Petitioner Management, one part of the monthly pay is paid as 50% basic pay and 50% of the balance fixed as other allowances i.e. 15% as HRA and balance 10% as conveyance allowance and 25% as other allowances. According to the Management, HRA, conveyance allowance and incentive are taken in total and the wages is equal to the wages fixed for the Engineering and Fabrication Industry as minimum wages by the Tamil Nadu Government.

7. Writ Petitioner Management has further averred that workmen are paid basic pay and other allowances i.e. HRA and conveyance allowances if taken together would be equal to minimum wages and further workmen are paid incentive and the salary is accounted in Group "B" [Zone B] and therefore, the claim of the workmen that they have not paid minimum wages is not maintainable.

8. Before 1st Respondent Authority/Asst. Labour Commissioner, parties adduced oral and documentary evidence. 1st Respondent Authority has held that conveyance allowance and other allowances would not be included within the meaning of Section 2(h) of MW Act. The Authority had taken into account basic pay and HRA and concluded that all 132 workmen are entitled to receive minimum wages as arrears. Referring to oral evidence and arrears indicated in the Annexure, 1st Respondent has ordered payment of arrears of wages at Rs. 37,01,663.61 and also awarded penalty to limes the arrears i.e. Rs. 3,70,16,636.10 as indicated in Para (1) and total payment of Rs. 4,07,18,229.17.

9. W.P. No. 16971/2008:

For claiming arrears of wages for the period from 2000 to 2006, there has been delay of 2162 days which was condoned by the MW Authority which is the subject matter of challenge in W.P. No. 16971/2008.

10. Mr. A.L. Somayaji, learned Senior Counsel submitted that no sufficient cause was shown for the inordinate delay and while so, MW Authority erred in condoning the delay. Learned Senior Counsel would further submit that no reason much less convincing or acceptable reason was adduced to condone the delay.

11. Mr. N.G.R. Prasad, learned Counsel for the 2nd Respondent-workmen submitted that the workmen were under legitimate fear that if they claim wages, their services might be terminated which has caused the delay and that the delay was not wanton or willfull. Learned Counsel for the 2nd Respondent would further submit that after taking into consideration of the facts and circumstances of the case and referring to Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , the Authority had condoned the delay and that the same cannot be interfered with.

12. Learned Senior Counsel for the Writ Petitioner contended that once there are rules prescribing the period of limitation for claiming minimum wages, then those rules have to be obeyed by the concerned Authorities and that when no satisfactory reasons are forthcoming, the Authority ought not to have erred in condoning the delay. In support of his contention, learned Senior Counsel placed reliance upon 1990 (1) LLN 457 [TN Mercantile Bank Ltd. (rep. by its Chairman) Tuticorin v. Appellate Authority under the Tamil Nadu Shops and Establishments Act Madurai and Anr.]; 2001 (2) LLJ 451 [Shivalingappa v. Management of Minerva Mills, Bangalore and Ors.] and 2008 (2) LLN 552 [Management, Saveetha Dental College and Hospitals (rep. by its President) v. Dy. Commissioner of Labour, Chennai].

13. Payment of MW Act having been enacted keeping in mind the welfare of the workmen and to take care of the legitimate needs of the workers. Constitution of India inter alia had solemnly resolved to secure the economic justice to the people of India. As per Section 12 of MW Act, the Management is bound to pay minimum wages. When the claim for minimum wages is made, technical

objections are not to be an impediment for rendering justice.

14. Observing that the expression "sufficient cause" should be considered with pragmatism with a justice oriented approach, in *Arun Alexander Lakshman, Proprietor Alraj Builders and V.E. Arun Vs. A.P. Vedavalli*, , Division Bench of this Court held as under:

P.17 It is settled law that Section 5 Application is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the Court has to go into the position of the person concerned and find out if the delay can be said to have been resulted from the cause which the Petitioner had adduced and whether the cause stated in the circumstances of the case is sufficient. It is the condition precedent for the exercise of discretion that the Court must satisfy itself as to whether there was sufficient cause for exercising such discretion and condoning the delay. The expression "sufficient cause" should be considered with pragmatism with a justice oriented approach.

P.18 Court has to see whether sufficient cause is shown for the delay. What is or what is not "sufficient cause" would depend upon varied and special circumstances of each case. To decide whether sufficient cause is shown or not, it is very undesirable to act upon precedents as every Judge has to deal with particular facts of each case. In *State of Kerala v. E.K. Kuriyipe and Ors.* , it was held that whether or not there is sufficient cause for condonation of delay is a question of fact dependent upon the facts and circumstances of the particular case.

15. In the oft-quoted, in *N. Balakrishnan Vs. M. Krishnamurthy*, , the Supreme Court has held as under:

P.13 A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" u/s 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain Vs. Kuntal Kumari and Others*, and *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*, .

16. In *State of Bihar and Others Vs. Kameshwar Prasad Singh and Another*, , the Supreme Court issued certain guidelines in considering the condone delay application and in Para 13, it has held as follows:

13. ... the purpose of Limitation Act was not to destroy the rights. It is founded on public policy fixing a life span for the legal remedy for the general welfare. The primary function of a Court is to adjudicate disputes between the parties and to advance substantial justice. The time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. The object of providing legal remedy is to repair the damage caused by reason of legal injury. If the explanation given does not

smack malafides or is not shown to have been put forth as a part of dilatory strategy, the court must show utmost consideration to the suitor. ...

17. Minimum Wages Authority observed that the reasons stated by the workmen for not making the claim for minimum wages was found acceptable. The Authority under MW Act in its discretion to condone the delay in presentation of the claim. When the MW Authority had exercised its discretion in condoning the delay, High Court will not interfere with the exercise of discretion unless shown to be perverse. Whether minimum wages is payable to the workmen or not could be determined upon hearing the parties. In the facts and circumstances of the case, it cannot be said that there is improper exercise of discretion by the MW Authority.

18. W.P. No. 16970/2008:

Challenging the impugned order Mr. A.L. Somayaji, learned Senior Counsel for the Writ Petitioner Management contended that workmen are paid 50% basic pay, 15% HRA, 10% conveyance allowance and 25% other allowances which form part of wages within the meaning of Section 2(h) of MW Act. Learned Senior Counsel submitted that even if the conveyance allowance is excluded, balance would satisfy the requirements of MW Act and the total amount had never fallen below MW Act.

19. Laying emphasis upon 1956 (2) LLJ 490 [Madras Port Trust (by Chairman) v. Claims Authority (under Minimum Wages Act)], it was mainly contended that Section 4(1) of the Act did not postulate different minima for several components. It was further submitted that the total paid to the employees under the contract as wages exceeded the minimum rate applicable to them and therefore, the minimum rate notified by the Government would not alter the position. Learned Senior Counsel would further submit that when the Management is paying higher rate of wages than the one prescribed by the Notifications, there may not be necessary of paying wages and also Dearness Allowance under two different heads. It was further argued that "other allowances" paid is part of wages and not to defray the other allowances.

20. On behalf of the 2nd Respondent workmen, Mr. N.G.R. Prasad, learned Counsel has contended that conveyance allowance would not fall within the ambit of Section 2(h) and "other allowance" paid might be u/s 2(h)(iv) to defray the special expenses. It was further argued that by producing registers maintained by the Management, the Management ought to have proved that other allowance are not towards defraying the "other allowances" u/s 2(h)(iv) and no registers were produced by the Management. Learned Counsel for the 2nd Respondent would further submit that Tribunal has gone into all the aspect and rightly held that other allowances paid is not component of wage and since contractual wage is not in accordance with Minimum Wages Act, the Authority has rightly ordered payment of arrears of minimum wages and also penalty.

21. Having regard to the rival submissions and materials on record, the following

points arise for consideration:

? Whether prior to 30.6.2003, Writ Petitioner Management is not liable to pay wages to 74 workmen who were the contract labourers through Esseness Engineering Services?

? Whether conveyance allowance and other allowance should be taken into account or not for the purpose of calculating wages within the meaning of Section 2(h) of MW Act?

? Whether wages paid by the employer is the minimum wages as contemplated under MW Act and Notifications issued by the Government of Tamil Nadu?

? Whether Writ Petitioner Management are right in contending that they are paying higher rate of wages and it absolves them from paying another component Dearness Allowance?

? Whether in the circumstances, workmen are entitled to the difference between basic pay and HRA and wages payable under MW Act?

? In awarding penalty of 10 times of arrears whether there is proper exercise of discretion?

22. Before advertng to the contentious points, we may note certain factual details. Period of payment of wages covered in dispute from November 2000 to March 2007. Writ Petitioner company carries on the business "General Engineering & Fabrication Industry", an employment in respect of which a Notification of Tamil Nadu Government is in force. Writ Petitioner company had for a period beginning the last quarter of the year 2000, contracted the services of 74 workmen of Esseness Engineering Services for supply of Engineering on June 2003. They were engaged as casual workmen by the Writ Petitioner company from 01.7.2003. In addition, 59 workmen were in the employment of the Writ Petitioner company itself. Thus, the claim before the 1st Respondent Authority was for payment of arrears in respect of 133 workmen.

23. As per Section 12 where in respect of any scheduled employment, Notification u/s 5 is in force, employer shall pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such Notification without any deductions except as may be authorised. Admittedly, Writ Petitioner Management runs Engineering and Fabrication Industry which is a scheduled business whose respect Notification u/s 5 is in force. Obligation u/s 12 of the Act is complied with so long as the wages the employer pays is not less than the minimum rate of wages.

24. Point No. 1:- Insofar as, 74 workmen are concerned, Management's case before Minimum Wages Authority was that 74 workmen had worked with Esseness Engineering Services, a contractor till 30.6.2003 and that from 01.7.2003 they were employed as Casuals by the Writ Petitioner Management. Management's case before the Authority was that those 74 workmen are not

their workers and it is only the contractor Esseness Engineering Services is their employer.

25. Case of the Management is that it has registered itself as a principal employer under the Contract Labour (Regulation & Abolition) Act and the engagement of the contract labour through Esseness Engineering Services was covered by the certificate of registration and the contract awarded to Esseness Engineering Services was terminated on 30.6.2003. According to Writ Petitioner Management, the said Esseness Engineering Services was covered under EPF Act having a separate Code number. Employees of Esseness Engineering Services were deployed to the Writ Petitioner Management and those workers were engaged by the Management as casual workmen from 01.7.2003. On those averments, Writ Petitioner Management denied its liability to pay difference in wages in respect of 74 workmen till 30.6.2003.

26. Admittedly, those 74 workmen have been employed by the Writ Petitioner Management through contractor Esseness Engineering Services and the same is covered by certificate of registration under Contract Labour (Regulation & Abolition) Act. Section 2(e) of MW Act, 1948 defines the word "employer" that any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rate of wages have been fixed.

27. Notwithstanding that 74 workmen were employed through Esseness Engineering Services, Writ Petitioner Management is required to pay minimum wages to those 74 workmen and being principal employer, Writ Petitioner Management cannot deny its liability to pay minimum wages to those 74 workmen. Therefore, the Court has to consider all 133 workmen for the period from November 2000 to March 2007.

28. Point Nos. 2 to 5:

Case of the Management is that workmen are paid minimum wages under the Caption basic pay, other allowance, HRA, conveyance allowance and incentive and if all of them are taken into account, Management has paid wages not less than the minimum rate of wages fixed by the appropriate Government. On behalf of the Management, it was mainly argued that the remuneration paid being the fulfillment of the terms of contract of the employment. Laying emphasis upon Clause-4 of Minimum Wages Notification, it was mainly argued that where the existing wages are higher than the minimum rate of wages, the same should continue to be paid and according to Management this can only be construed to mean where existing wages are higher, the same shall be the substitute for minimum wages fixed.

29. Workmen are paid wages under the following heads:

Basic wage : 50% Other Allowance : 25% HRA : 15% Conveyance Allowance :

10%

30. There is no dispute that HRA paid falls within the definition of Section 2(h) of MW Act. Dispute pertains to the statement of conveyance allowance and other allowances paid. 2nd Respondent maintains that except basic wage, neither travelling allowance nor other allowance would constitute "wage" u/s 2(h) of MW Act.

31. The contentious issues revolve around interpretation of Section 2(h) and Section 4 of MW Act. Section 2(h) of MW Act defines wages as follows:

all remuneration capable of being expressed in terms of money, which would if the terms of contract of employment express or implied were fulfilled, be payable to a person employed in respect of his employment, or of work done in such employment and includes house rent allowance but does not include

(i) the value of:

(a) any house accommodation, supply of light, water, medical attendance, or

(b) any other amenity or any service excluded by general or specific order of the appropriate Government.

(ii) any contribution paid by the employer to any pension fund or provident fund or under any scheme of social insurance.

(iii) any travelling allowance or the value of any travelling concession.

(iv) any sum paid to the person employed to defray special expenses on him by the nature of his employment, or

(v) any gratuity payable on discharge.

32. House Rent Allowance is specifically included in Section 2(h). Generally, if such allowance is part of general conditions of service/employment to the class of employees work to which one belongs to, it becomes payable if the conditions prescribed in the scheme are fulfilled. Only the definition made this explicit. Another item is Dearness Allowance . It is not included in the definition of wages under the Minimum Wages Act. However, Section 4(1) enables the appropriate Government to fix the minimum rates of wages inclusive of Dearness Allowance or fix Dearness Allowance as a separate component. If a scheme is made to a class of employees it becomes payable though it is not expressly included in the definition of wages. The Industrial Disputes Act includes Dearness Allowance as a component of wages along with the allowances which a workman is being entitled to for the time being.

33. Section 4 of MW Act reads as follows:

4(1) Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments u/s 3 may consist of

(i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practical with the variation in the cost of living index number applicable to such workers (hereinafter referred to as the "cost of living allowance"); or

(ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorised; or

(iii) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of concessions, if any.

(2) The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rates shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate Government.

34. u/s 4 of MW Act the appropriate Government may fix minimum rates of wages, which may consist of the following three components:

(a) basic wage rate

(b) special allowance, which may or may not vary according to cost of living (generally known as Dearness Allowance)

(c) supply of essential commodities at concession rates or cash value of the same.

There are three ways of fixing minimum rates of wages. (1) It may consist of basic wage and special allowance to be adjusted according to the cost of living index, (2) It may consist of basic rate of wages with or without the cost of living allowance and the cash value of concessions in respect of supply of essential commodities at concessional rates; (3) It may be an all inclusive rate allowing for the basic rate, cost of living allowance and cash value of concessions, if any.

35. u/s 4 of the Act, the minimum rate of wage to be fixed by the appropriate Government may consist of (1) basic rate of wage and (2) special allowance or Dearness Allowance , at a rate to be adjusted with variation in the cost of living index number.

36. Notification by the TN Government

G.O.(D) No. 1050 dt. 03.08.1995 }

G.O.(2D) No. 17 L & E (J1) dt. 23.4.2002

In exercise of the powers conferred by Section 3(1)(b) of MW Act, 1948, Government have revised the minimum rates of wages payable to the classes of employees in General Engineering and Fabrication Industry in the State of Tamil Nadu as required by Section 5(1)(b), Government passed G.O. (D) No. 1050 dated 03.08.1995. Government have also passed G.O. (2D) No. 17, Labour and

Employment (J1) dated 23.4.2002. In both the Government Orders, there is classification of Zone : Zone-A and Zone-B:

Zone A : All District Headquarters, Corporation and Municipalities:

Zone B : Other places.

37. Both Government Orders fixed minimum rate of basic wage and cost of living allowance - DA. Both Government Orders contemplate payment of Dearness Allowance .Apart from fixing minimum wages, G.O. (D) No. 1050 dated 03.08.1995 stipulates payment of Dearness Allowance as under:

Dearness Allowance .- The employees shall be paid Dearness Allowance as indicated below:

(i) The wages notified above is linked to the average Madras City Consumer Price Index for the year 1991, namely, 1051 points (with base 1960=100) and for any further rise of every point, over and above 1051 points, variable Dearness Allowance shall be paid at the rate of 85 paise per month.

(ii) The revision of Dearness Allowance shall be effective from the 1st April of every year on the basis of the average of the indices for the earlier twelve months, i.e., from January to December.

(iii) The first calculation shall be effective from the date of the publication of this Notification in the Tamil Nadu Government Gazette, based on the average of the Consumer Price Index Numbers for the previous year.

38. Apart from fixing minimum wages for various category of workmen, G.O. (2D) No. 17 L & E dated 23.4.2002 stipulates payment of Dearness Allowance as under:

Dearness Allowance .- The employees shall be paid Dearness Allowance as indicated below:

(i) The wages notified above is linked to the average Chennai City Consumer Price Index for the year 1993, namely, 258 points (with base 1982=100) and for any further rise of every point, over and above 258 point, Variable Dearness Allowance shall be paid at the rate of Rupees 5.20 per point per month.

(ii) The revision of Dearness Allowance shall be effective from the 1st April of every year on the basis of the average of the indices for the earlier twelve months, i.e., from January to December.

(iii) The first calculation shall be effective from the date of the publication of this Notification in the Tamil Nadu Government Gazette, based on the average of the Consumer Price Index Numbers for the previous year.

39. Notifications also stated that wherever prevailing rate of wage was higher, the higher rates of wages shall continue to be paid [Vide Clause 5 in explanation in G.O.(D) No. 1050 dated 03.08.1995; Clause 4 in explanation in G.O.(2D) No.

17 L & E (J1) dated 23.4.2002].

40. According to the employer, workers are paid more wages than stipulated under the Notifications. To substantiate the plea of Management that workers are paid higher wages, certain illustrative example was referred to. To appreciate the point urged by the Management, we may refer to salary of workman G.M. Devanathan.

Wages payable under the MW Act (May 2002 to March 2003):				Wages paid by the Management (May 2002 to March 2003):			
details	Value	in	INR	Salary details	Value	in	INR
				Basic			1750.00
1740.00				DA			1190.80
HRA	525.00						
TOTAL	2930.80			Other Allowance			875.00
							**
Conveyance							350.00
							TOTAL
3500.00							

** Free transportation is said to be provided by the Company to all the workmen. The said "Conveyance" component is said to be over and above the free transport provided by the Company to the workmen.

41. Learned Senior Counsel for the Writ Petitioner Management strongly relies upon the decision 1956 (2) LLJ 490 [Madras Port Trust (by Chairman) v. Claims Authority (under Minimum Wages Act)], to contend that minimum wages does not mean that each component should have the minimum. Learned Senior Counsel mainly argued that so long as the total remuneration paid is more than the sum total of the components constituting the minimum wages, there is compliance with minimum wages Notification . It was further argued that it is not incumbent for the purpose of compliance of the minimum wage minimum of each component should be maintained.

42. u/s 2(h)(iii) of MW Act, travelling allowance or value of travelling concession has been excluded. Laying emphasis upon the above Clause, Management argued that they are paying the gross wage which is all inclusive and which is more than what the Government fixed as minimum wage and other allowances put together. It was further argued that as the Management is paying more than what the worker is entitled to receive under the Notification and therefore, Management should not be forced to pay Dearness Allowance fixed by the Government.

43. Learned Senior Counsel Mr. A.L.Somayaji contended that even if the conveyance allowance is excluded, the balance amount paid to workmen would be higher than the minimum wages fixed and therefore there is compliance with

minimum wages Notification . Main contention of the Writ Petitioner is that gross wage paid to the workmen is more than what the Government have fixed as minimum wages and there is compliance with minimum wages Notification which the MW Authority failed to appreciate.

44. For more than one reason, it is difficult to accept the above contention.

? As such employer has not challenged the validity of the Notification;

? Writ Petitioner Unit functions from 2000. G.O.(D) No. 1050 dated 03.8.1995 and G.O.(2D) No. 17 L & E (J1) dated 23.4.2002 make it obligatory to pay Dearness Allowance linked with City Consumer Price Index;

? If other allowances really include Dearness Allowance to match with variable cost of living, the head of "other allowance" could have been bifurcated and could have been specifically indicated.

45. As pointed out earlier, HRA is specifically included in Section 2(h) of the Act. Conveyance Allowance is specifically excluded as per Section 2(h)(iii). Main point to be considered is in respect of "other allowance" paid and whether "other allowances" would par take the character of wages. Contention of the employer is that "other allowance" if included would definitely exceed the minimum wages. It was further argued that in the Notification it was indicated that wherever the prevailing rate of wages are higher, higher rate of wages continue to be paid.

46. Learned Counsel for the 2nd Respondent contended that if other allowance paid by the Management is not included, then the wages would fall short of minimum wages Notification . Wages has been defined u/s 2(h) of MW Act. It includes certain payments and excludes certain payments.

47. u/s 2(h)(iii) of MW Act, any travelling allowance or the value of travelling concession has been excluded. u/s 2(h)(iv) of MW Act, any sum paid to the persons employed to defray special expenses entailed on him by the nature of his employment has also been excluded.

48. As pointed out earlier, Management has been paying 50% basic; 15% HRA; 10% conveyance allowance and 25% as other allowances. Contention of the 2nd Respondent is that even according to the Management, only if conveyance allowance and other allowances are taken into account, the wages paid to the employees will be more than the minimum wages or otherwise it will be less than the minimum wages.

49. u/s 4 of MW Act, there could be only three components in the minimum wages:

(i) Basic wage rate;

(ii) Special allowance (DA);

(iii) Cash value of concessions in respect of supply of essential commodities.

As pointed out earlier, as per Section 2(h)(iii) travelling allowance/conveyance allowance is excluded from the ambit of Section 2(h) of MW Act.

50. As noted earlier, minimum wages Notifications stipulate two payments:

? Basis wage (minimum fixed in the Notifications).

? Dearness Allowance which is linked to Cost of Living Index.

If other allowance is to be taken within the fold of wages within the meaning of Section 2(h), the Management has to establish that "other allowances" partakes the nature of Dearness Allowance .

51. A perusal of the Notifications would show that Dearness Allowance is linked to Cost of Living Index/City Consumer Price Index . Section 2(d) is defined as under:

Cost of Living Index number" in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed, means the index number ascertained and declared by the competent authority by Notification in the Official Gazette to be the cost of living index number applicable to employee in such employment.

52. The Supreme Court consistently held that Dearness Allowance as provided under the Minimum Wages Act should be provided for. In 1965 (11) FLR 337 : (1966) 1 LLJ 1 [Ahmedabad Mill Owners" Association v. Textiles Labour Association], the Hon"ble Supreme Court has held as under:

The wages due to a worker is in the nature of expenses just like payment for raw materials. In this sense the wages are expenses which have to be met whether the company works, makes a profit or not. So far as the minimum wages due to a worker are concerned, the law requires that they should be paid first and if the industry cannot pay them it may as well close. The payment of Dearness Allowance as prescribed under the Minimum Wages Act should also be provided for in any event.

From the above observation of the Supreme Court, it is quite clear that employer is bound to pay minimum wages due to a worker and also Dearness Allowance as prescribed under MW Act in all events.

53. The concept of Dearness Allowance has been succinctly stated by the Supreme Court in Hindustan Lever Ltd. v. B.N. Dongre 1994 (69) FLR 451 : 1994 (1) LLN 884 in the following words:

The concept of Dearness Allowance , the second most important element in Worker's Wage-plan next to the basic wage, was introduced during the second World War to meet the increase in the cost of living caused by inflation. It was either linked to the cost of living index or was given by way of flat increase. When linked to the former, it was granted to all the income groups at a flat rate or was graded on the scale admissible to different income groups diminishing

with rise in income. Basically, the concept of Dearness Allowance was designed to combat inflation and protect real wages and therefore it would appear that there should be cent percent neutralisation. Normally a Dearness Allowance formula suffers from two drawbacks, (i) it has the pernicious effect of distorting the wage structure, and (ii) it results in a sharp erosion of real income, particularly of those in the higher wage groups. Generally speaking, the distortion of the wage structure takes place because employees in different pay scales are granted Dearness Allowance not at a uniform rate but at a tapering rate, i.e. the workers in the lower scales getting a higher neutralisation as compared to those in the higher pay brackets in whose case the neutralisation percentage diminishes with the rise in basic wage. That is because it is believed that those in the higher pay brackets have a cushion to absorb the brunt of inflation.

54. Dearness Allowance was intended to neutralise a portion of the increasing Cost of Living. Though 100% neutralisation is not permissible as it will lead to inflation, full neutralisation may be permissible in the case of lowest class of employees and seasonal employees. If the wages are to be realistic, it may become necessary to fix them so as to neutralise at least partly the price rise in essential commodities.

55. In the present case, according to the Management, "other allowances" would include Dearness Allowance linked with Cost of Living Index-DA. As per Section 2(h)(iv) any sum paid to the persons employed to defray special expenses entailed on him by the nature of his employment has also been excluded.

56. Writ Petitioner Management is engaged in Engineering and Fabrication works. Having regard to the nature of employment, Writ Petitioner Management might require to pay to its employees "other allowances" like Uniform Allowance, Medical Allowance, Attendant Allowance or allowance in lieu of any other amenities or of any concessional supply of food grains or other articles or Food Allowance (in lieu of canteen). "Other Allowance" need not necessarily be Dearness Allowance which forming part of wages. In his evidence, P.W.1 Palani has categorically stated that workmen were not paid Dearness Allowance. According to the workmen, Management have deliberately not paid Dearness Allowance.

57. Learned Counsel for the 2nd Respondent has drawn attention of the Court to the Circular issued by the Management stating that all the workmen will be eligible for Deepavali gift of Rs. 1250/- and the same will be paid at Rs. 125/- per month as special allowance w.e.f. 1st November 2007 along with the salary in lieu of Deepavali gift.

58. To rebut the evidence of PW1 and to show that "other allowance" paid to the workers would also include Dearness Allowance linked to Cost of Living Index, Management has not produced any records. As pointed out by Mr. N.G.R. Prasad, learned Counsel for the 2nd Respondent, u/s 18 of MW Act, the Management has got to maintain registers and records for the payment of minimum wages. u/s

18(3) of MW Act, the Management has got to issue wage book or wage slip to the employees employed in any scheduled employment with entries regarding the minimum rates of wages. Though the Management has not produced any documents, the Management itself in their answer statement at page-48 of their Typed set has stated that they have not been able to trace the records earlier to November 2003.

59. The Management did not produce any records to prove that they are paying minimum wages under Form-X of Minimum Wages (Central) Rules, 1950 relating to register of wages speaks of basic wage and Dearness Allowance. Management has also not produced any records to show that they have paid any Dearness Allowance. Since the Management have not placed any records to show that "other allowances" is also part of wages as per Section 2(h) of MW Act, the "other allowances" has not been proved to be a wage.

60. Placing reliance upon 1956 (2) LLJ 490 [Madras Port Trust (by Chairman) v. Claims Authority (under Minimum Wages Act)], Mr. A.L. Somayaji, learned Senior Counsel for the Management has contended that Section 4(1) of the Act did not postulate different minima for the several components nor could each such minimum constitute the minimum rate of wages within the meaning of Section 4(1). Observing that the employee is entitled to get wages, the totality thereof, at a rate not less than the minimum rate prescribed, in 1956 (2) LLJ 490 [Madras Port Trust (by Chairman) v. Claims Authority (under Minimum Wages Act)], the Division Bench of Madras High Court has held as follows:

Basically what the employee is entitled to is wages. The scheme of the Act is to provide for a minimum wage for each employee. The minimum applies to the rate. But what is payable is still the wages. The Act provides for the payment of a minimum. So long as that minimum is paid, the contractual wage structure is left unaffected and the component parts of the wages can still be regulated by contract between the employer and the employee.

....

... When those rates are fixed and notified u/s 5(2) of the Act, the employee's right is to be paid at the minimum rate applicable to him and the employer's duty, as defined by Section 12(1), is to pay at that minimum rate to the employee. Except for that liability, the contract between the employee and the employer is left intact. If, for instance, the contract rate of wages is higher, the statutory right and obligation do not come into play. The statutory right of the employee itself is to receive wages at a rate not lower than the notified minimum rate.

....

What Section 4 provides for is a rate of wages payable to an employee, which is called the minimum rate of wages. Where what is payable to an employee has to be determined, the Act speaks of a minimum rate of wages, e.g., Sections 4(1),

12, 14 and 15. No doubt Section 20(2) provides for cases where an employee is paid less than the minimum rates of wages fixed for his class of work under this Act.

61. In Madras Port Trust case, employee was paid special Dearness Allowance of Rs. 15/- whereas minimum wage Notification referred to Dearness Allowance of Rs. 40/-. In such facts and circumstances of the case, Division Bench of Madras High Court has held that special Dearness Allowance is also the Dearness Allowance and each component cannot be viewed separately since, the amount includes Rs. 15/- as wage and it was more than one stipulated under the Notification. In the present case, employer has not shown that he is paying Dearness Allowance at all. While so, the decision of Madras Port Trust case is of no assistance to the Writ Petition.

62. Reliance was also placed upon in Municipal Borough, Bijapur Vs. Gundawan (M.N.) and Others, in which referring to Madras Port Trust case, the Mysore High Court has held as follows:

The above conclusion of ours gains support from the decision of the Madras High Court in Chairman of the Madras Port Trust Vs. Claims Authority and Others, . Similar was the view taken by the Bombay High Court in Union of India Vs. Rathi B.D., . Therein the Court laid down that the object of the Act is to provide minimum wages to the employees according to the nature and the duration of the work done by the employees. That being so, the authority functioning under the Act has, in a case before him, to find out what is the total liability imposed on the employer in order to achieve that object. In this respect, Section 12(1) is the only section which defines that liability of the employer as regards the payment of wages. Thus, so long as the employer pays the total minimum wages as provided by the said Act and the rules thereunder, the employee will not be liable to get anything more, merely because the Act provides for the regulation of the hours of work and because Rule 25 of the Minimum Wages (Central) Rules, 1950, prescribes wages for the overtime work at the double the ordinary rate of wages. So long as the employer pays the employees the total minimum wages, including overtime wages, as provided by the said Act and the rules thereunder, the domain of contract is left untouched.

63. To substantiate the above contention that minimum rates of wages fixed under MW Act constitute remuneration payable to the worker as one package of fixed amount, learned Senior Counsel Mr. A.L. Somayaji placed reliance upon 2002 FJR 142 [Ramakrishna Homeo Pharmaceuticals Pvt. Ltd. v. Authority under Minimum Wages Act and Anr.]. For the same proposition, reliance was also placed upon the decision of the Bombay High Court in Harilal Jechand Doshi Ghatkopar Hindu Sabha Hospital Vs. Maharashtra General Kamgar Union and another, in which Justice A.P. Shah, (as his Lordship then was) held as follows:

It is thus clearly seen that Section 4(1) of the Act provides for the minimum rate which could consist of component parts. Section 4(1) does not postulate different

minimum for the several components. If the employer has paid the total wages more than the minimum rate of wages within the meaning of Section 4(1), there cannot be any contravention of provisions of this Act.

64. For the Management, learned Senior Counsel Mr. A.L.Somayaji has also placed reliance upon the following observations in Airfreight case [1999 (2) LLJ 705 (Airfreight Ltd. v. State of Karnataka and Ors.)] wherein the Hon''ble Supreme Court has held as follows:

23. Once rates of minimum wages are prescribed under the Act, whether as all inclusive u/s 4(1)(iii) or by combining basic plus dearness allowance u/s 4(1) (i), are not amenable to split up. It is one pay package. Neither the scheme nor any provision of the Act provides that the rates of minimum wages are to be split up on the basis of the cost of each necessities taken into consideration for fixing the same. Hence, in cases where employer is paying total sum which is higher than minimum rates of wages fixed under the Act including the cost of living index (VDA), he is not required to pay VDA separately.

65. There could be no two views on the proposition that Section 4(1) does not postulate different minima for the several components. What is essential is that employee has to be paid wages and even if higher wages, it must satisfy the requirements and fall within the meaning of Section 4(1) of MW Act.

66. In the present case, as per the requirements of Section 4(1) and Notifications, Dearness Allowance linked with Cost of Living Index is not shown to be paid. The split up figure of the amount paid under "other allowances" is not given. Employer has not shown that "other allowances" is not intended to defray any other allowances or amenities. The employer has also not shown as to what extent the "other allowances" is linked with Cost of Living Index.

67. Minimum Wages Act is a beneficial piece of social legislation which protects the day to-day living conditions of the workers employed at the lowest level of wages in the sweated labour. Notifications seems to take care of the legitimate needs of the workers. Dearness Allowance is primarily intended as protection of persons whose salaries are at the sustenance level to protect them against the adverse effects on the rise in prices. The meaningful interpretation of the provisions of MW Act and the Notifications has to be adopted. First Respondent has rightly held that "other allowances" is not the component of minimum wages fixed u/s 4(1) of MW Act and that Writ Petitioner Management is liable to pay the arrears of Rs. 37,01,663.61.

68. Next question falling for consideration, does it warrant levy of penalty of ten times. Whether 1st Respondent - Minimum Wages Authority was justified in directing payment of outer limit amount of compensation i.e. ten times, the difference in wages. u/s 20(3) of MW Act, outer limit is ten times difference in wages payable.

69. Clauses (i) and (ii) of Section 20(3) of the Act read as follows:

(i) In the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed actually paid together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess.

(ii) In any other case the payment of the amount due to the employee with the payment of such compensation as the authority may think fit, not exceeding ten rupees, and the Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of application.

70. These clauses make a distinction between the cases where the employer pays to the employee on his own the amounts due to him before the disposal of the claim petition and where they are paid on the direction of the authority. The Authority can award, under this section:

- (a) the amounts due to the employee and
- (b) compensation
- (c) Interest

Under this section the Authority can award compensation only when he finds that the employer has not paid the minimum wages in full as notified by the Government. If he finds that the employer does not have to pay anything more to the claimant employee, no compensation can be awarded to the employee by the Authority.

71. It was to the discretion of the Authority to award compensation or not and what the amount of compensation should be. The discretion has to be judiciously exercised and all the circumstances connected with the matter, that was, non-payment or delayed payment, must be taken into account. There may be cases where the employer may not be at fault, there may be some difficulties in his way or there may be some cause which prevented him from implementing the provisions of the Act. All these matters are to be taken into account before an order is made granting compensation of a particular amount [Vide 1969 (18) FLR 358 (Bom.) C.S. Parameswaran v. Authority under Minimum Wages Act].

72. Awarding compensation is a matter that should be considered on merits. It cannot be awarded without any rhyme or reason. Ten times is the outer limit. Such maximum limit can be awarded where the Authority was of the view that the employer has paid less wages than the prescribed maximum and had done so inspite of demands from employees or any officer or the authority. [Vide G.S. Dugal and Co. (Private) Ltd. Vs. Labour Inspector (Central), .

73. In Priya Darsan Agarbatti Vs. State of M.P. and Others, , the Division Bench of Madhya Pradesh High Court has held that the discretion u/s 20(3)(i) of the Minimum Wages Act has to be exercised on consideration of the entirety of the

facts and circumstances. Even as early as 1960's a Division Bench of Patna High Court in *G.S. Dugal & Co. P. Ltd., v. Labour Inspector (Central), Ranchi* AIR 1968 Patna 90 had held that:

Although no criteria are indicated in Clause (i) of Sub-section (3) of Section 20 of the Act for fixing the amount of compensation which has to be directed to be paid along with the amount of the excess wages within the meaning of the said clause, i.e., the excess amount by which the minimum wages payable to the employees concerned exceeds the amount actually paid, the outer limit of the amount of compensation is ten times such excess amount. That can never mean that without any rhyme or reason and in all cases it must be ten times the said amount. The quantum of compensation has got to be fixed with reference to the facts of each case.

74. In a case under the Minimum Wages Act, a Division of Gujarat High Court in *Chief Officer, Bhavnagar Nagarpalika Vs. Meghajibhai Ugabhai and Others*, held as follows:

Once it is found that the nature of powers to be exercised u/s 20 of the Act is judicial, there is no escape from the conclusion that the discretion conferred upon the Authority invested with such judicial powers is not unbridled or unguided. By the very nature of its powers, such Authority is required carefully to look into the matter and to decide it in accordance with sound judicious principles. Even if such Authority has to exercise discretionary powers, the very nature of powers carries with them implicit guidelines to exercise such discretion in a judicial and judicious manner. Conferment of discretionary powers on the authorities performing judicial functions can never be considered arbitrary.

.... a judicial decision is usually supported by reasons. Recording of reasons in support of a finding or conclusion is ordinarily a part of judicial process. What weighed with the authority invested with judicial powers in deciding a case or in giving a direction or directions is normally found reflected in its reasoned order what is popularly known in the legal parlance, speaking order. The requirement of recording reasons in support of its decision or direction based on exercise of discretionary powers is in itself a guideline for exercise of such discretionary powers. It rules out conferment of unbridled and unguided arbitrary powers on the authority ... Furthermore, the award of compensation u/s 20(3) of the Act is not compulsory or mandatory. Such award would depend upon various factors like the nature of employment, the status of the employer, the nature of defaults, the number of defaults, the frequency thereof, the amount involved, the delay in making payment of less than the minimum wages fixed and like matters. All these factors are bound to weigh with the Authority in its decision to award compensation, if any, and its quantum to the concerned workman with respect to the application u/s 20 of the Act.

75. From the above decisions it emerges that discretion u/s 20(3)(ii) has to be exercised and all the circumstances connected with the matter must be taken

into account. In the present case, Minimum Wages Authority has not given any reason for awarding ten times difference in wages. Power directing payment of compensation has not been judiciously exercised. Though delay in making the claim has been condoned, the delay is a vital aspect ought to have been taken note of by the 1st Respondent. In fact, as repeatedly urged by the Management, employer has paid more than what has been prescribed under the Minimum Wages Act. The employer cannot be said to be obstinate in denying payment of minimum wages. Because Management was not in a position to produce registers to show split up figure, the Management cannot be faulted to slap with ten times of difference in wages. In fact, employees never made grievance of it for nearly seven years. In such circumstances, directing payment of ten times of difference in wages is arbitrary and unreasonable. The compensation payable by the Writ Petitioner Management could be reduced equally to the arrears amount of wages payable.

76. The amount of compensation directed by the Supreme Court in *Purna Sahygo Vs. Authority under Minimum Wages*, (2001) 9 SCC 247, constitutes a good guide to the amount of compensation payable. In that case the Authority had found ulterior motive in the employer's conduct and directed it to pay eight time wages awarded as compensation to the workmen. Although the High Court had dismissed the Writ Petition, in a Petition seeking Special Leave to Appeal, the Supreme Court considered it a fit case for interference. Observing that the award of compensation was exorbitant, Supreme Court has held that compensation should be equivalent to the amount of the balance, unpaid wages awarded by the Authority. Supreme Court has ordered that each of the workers shall get as compensation, an amount equal to the balance, unpaid wages awarded to him and the impugned order of the Authority was modified to that extent.

77. Following the decision of the Supreme Court and other decisions, in the present case, 2nd Respondent workmen shall get as compensation, an amount equal to the arrears amount of wages awarded to them Rs. 37,01,663.61 i.e. the workmen would be entitled to the difference between wages actually paid and those payable to them under Minimum Wages Act. They would also be entitled to get compensation amount of Rs. 37,01,663.61, an amount of wages awarded to them.

78. W.P. No. 16970/2008:

In the result, the Writ Petition is partly allowed and the order of Minimum Wages Authority in MW. No. 59/2007 dated 13.6.2008 is modified.

? Writ Petitioner Management shall pay to the workmen Rs. 37,01,663.61 (an amount being difference of wages) plus Rs. 37,01,663.61 (as compensation) u/s 20(3) of MW Act. No costs.

79. W.P. No. 16971/2008:

In the result, the Writ Petition is dismissed. No costs.