
(2006) 02 KL CK 0023
In the High Court Of Kerala
Case No : W.A. No. 1578 of 2004

Varghese

APPELLANT

Vs

Padappu Ksheerolpadaka Sahakarana Sangham Ltd.

RESPONDENT

Date of Decision : 24-02-2006

Acts Referred:

Minimum Wages Act, 1948 — Section 2, 27, 3

Citation : (2006) 109 FLR 687 : (2006) 1 ILR (Ker) 837 : (2006) 2 KLT 116 :
(2006) 2 LLJ 1052

Hon'ble Judges : V.K.Bali, C.J;S. Siri Jagan, J

Bench : Division Bench

Advocate : V.N. Ramesan Nambisan, for the Appellant; K.V. Joseph and
Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : Secretary Padippu K.S. Sangam Ltd. Vs. C. Varghese, (2007) 113 FLR 827 : (2007) 2 LLJ 544 : (2007) 4 SCALE 560 : (2007) 9 SCC 301 : (2007) 2 SCC(L&S) 512 : (2007) 4 SCR 241

S. Siri Jagan, J.—The workman involved in an application under the Payment of Minimum Wages Act, has filed this appeal aggrieved by the judgment of the learned Single Judge in O.P. No. 7007/1998, by which the order passed by the authority under the Minimum Wages Act, 1948 was set aside by the learned Single Judge, holding that the Padappu Ksheerolpadaka Sahakarana Sangham Ltd. in which the appellant was working as a Milk Tester is not an industry coming within any of the industries enumerated in the schedule to the Minimum Wages Act, thereby excluding the application of the provisions of the said Act to the said establishment. The short facts necessary for the disposal of this Writ Appeal are as follows:

2. The 1st respondent is a co-operative society engaged in the business of collection of milk from small farmers and selling the same to the public.

Complaining about nonpayment of minimum wages applicable to the employees in dairy farms, the appellant filed an application before the 2nd respondent. The 2nd respondent upheld the contentions of the appellant and directed payment of minimum wages as per S.R.O. No. 804/92, by which the Government of Kerala prescribed the minimum wages for employees of dairy farming. The said order was challenged by the 1st respondent society before the learned Single Judge. The learned Single Judge allowed the Original Petition holding that the 1st respondent society is not a scheduled employment and therefore, the notification mentioned above is not applicable to the employees of the said society. The workman is challenging the said judgment in this appeal.

3. We have heard the learned Counsel for the appellant and the 1st respondent as also the learned Government Pleader.

4. The contention of the appellant is that collection of milk from farmers, testing the same and selling the same to the public form part of the employment in dairy farming and therefore, the business being conducted by the 1st respondent society squarely comes within the ambit of, the term employment in dairy farming, meaning thereby that the S.R.O. in question is applicable to the workers of the 1st respondent society.

5. On the other hand, the counsel for the 1st respondent co-operative society would contend that collection of milk from small farmers and selling the same to the public is not an employment scheduled under the Minimum Wages Act and therefore, the S.R.O. in question is not applicable to the workers of the 1st respondent society.

6. We have considered the rival contentions of the parties in detail. Fixation of minimum wages is as per Section 3 of the Minimum Wages Act, 1948 the relevant portion of which reads as under:

3. Fixing of minimum rates of wages

(1) The appropriate Government shall, in the manner hereinafter provided,--

(a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification u/s 27:

The Act also defines "Scheduled Employment" u/s 2(iv)(g) which reads thus:

2. Interpretation

XXX XXX XXX XXX XXX XXX (g) "scheduled employment" means an employment specified in the Schedule or any process or branch of work forming part of such employment

Of course Part I of the Schedule does not contain any entry relating to dairy or dairy-farming, but Part II of the schedule reads as under:

PART II

(1) Employment in agriculture, that is to say, in any form of farming, including the cultivation and tillage of the soil, dairy farming, the production, cultivation, growing and harvesting of any agricultural or horticultural commodity, the raising of live-stock, bees or poultry and any practice performed by a fanner or on a farm as incidental to or in conjunction with farm operation (including any forestry or timbering operations and the preparation of market and delivery of storage or to market or to carriage for transportation to market of farm produce).

7. It contains an entry "dairy farming". Dairy farming is the process by which milk is produced. Selling of milk so produced is essentially a part of the process of dairy farming itself because milk so produced has necessarily to be sold and the object of production of milk in large quantities is for sale. Therefore, the same can be seen only as a necessary part of the employment of dairy farming itself. Further, interpretation of the term "dairy farming" has to be made in the context that the Act is a beneficial legislation for fixing minimum rates of wages of workers in certain employments. Going by the established rules of interpretation of beneficial legislations the provisions of the Act have to be interpreted liberally in favour of the workmen for whose benefit the Act is intended. Viewed in that angle we have no hesitation to hold that the term "dairy farming" would include sale of milk which is the culmination of the process of production of milk. The contention of the respondents that the sale of milk does not form part of the process of production of milk which alone would constitute dairy farming does not appeal to us. Milk produced has necessarily to be sold to persons who consume the same. Without selling of the milk produced the industry of dairy farming would become without purpose. Therefore, collection and sale of milk would form part and parcel of the process of dairy farming itself.

8. Further it should be noted that the Act itself gives a specific: definition for "scheduled employment" mean an employment specified in the Schedule, or any process or branch of work forming part of such employment (emphasis supplied). Therefore, the entry in the Schedule read with the definition of "scheduled employment" gives absolutely no room for doubt that the collection, testing and sale of milk, in which the 1st respondent society is engaged in, would necessarily form a process or branch of the work forming part of the employment of dairy farming. In that view, the employment under the respondent society definitely forms employment in "dairy farming" for which minimum wages are notified by SRO No. 804/1992. Of course the counsel for the society would bring to our notice a letter issued by the Asst. Labour Officer, Kasargod to the effect that Milk Marketing Co-operative Societies would not come within the purview of Minimum Wages Act. That can only be an opinion which cannot be held to be the correct interpretation of the provisions of the law involved.

9. Therefore, the judgment of the learned Single Judge suffers from infirmity and deserves to be set aside. We do so and restore Ext.P1 order of the 2nd respondent Labour Commissioner directing payment of minimum wages to the appellant/workman. The amounts as directed in Ext.P1 order shall be paid to the

appellant within one month from the date of receipt of a copy of this judgment. The Writ Appeal is allowed as above, but without any order as costs.