

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Writ Petition (Civil) No.2492/2006

% Date of Decision : March 18, 2008

M/s. Kerala Automobiles Ltd. Petitioner

Through : Mr. H.S. Dahiya,
Advocate

VERSUS

Mrs. Naveetha P. Respondent

Through : Mr. Syed Sajad Ali,
Advocate

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be
allowed to see the judgment? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported
in the Digest ? Yes

SUDERSHAN KUMAR MISRA, J: (Oral)

1. The respondent had filed applications u/s 20 (2) of the Minimum Wages Act before the designated authority under the Minimum Wages Act. Pursuant to the said applications, the Authority under the Minimum Wages Act passed the impugned order dated 15th December 2005. By this order, five applications moved by the respondent under the Minimum Wages Act, 1948, were disposed of. In those applications, the respondent had claimed the difference in the payment actually made to her and

the amount that ought to have been paid to her under the Minimum Wages Act. The respondent had moved separate applications because varying amounts were being paid to the respondent for each month. In this way, keeping in mind the minimum wages payable to her, she claimed a sum of Rs. 12,480/- for the period, 1st February 2001 to 31st March 2002. For the period, 1st March 2002 to 31st August 2002, she claimed a sum of Rs. 4,860/-. For the period, 19th December 2002 to 19th May 2003, she claimed a sum of Rs. 3,383/-. For the period, 1st August 2003 to 31st August 2004, the respondent claimed Rs. 7,391.40 and for the period 1st Feb 2004 to 31st July 2004 also, she claimed a sum of Rs. 7,391.40/-. The respondent alleged that all these amounts claimed by her denoted the difference between the minimum wages payable to her in those periods and the wages actually given to her. Along with this amount, the respondent also claimed penalty at the rate of 10 times the amount which, according to her, was short paid to her.

2. A perusal of the impugned judgment shows that the learned authority has considered it appropriate to award the maximum compensation prescribed under the Minimum Wages Act in terms of Section 20 (3) (i) thereof merely on the ground that the petitioner is a public sector undertaking. The learned authority has concluded that, "I do not find any reason why maximum compensation prescribed in the law should not be awarded to the claimant. The management has also not

advanced any arguments on the quantum of penalty/ compensation to be imposed.” The authority has also stated that it feels, “compelled to direct management to pay the claimant compensation equivalent to 10 times on the balance amount of the minimum wages due to the workman.” A perusal of the impugned judgment demonstrates that this compulsion was felt by the authority on two grounds alone. Firstly, that the employer was a public sector organization, and it must be deterred from paying less than the minimum wages; and secondly, that no arguments were advanced on the quantum of penalty/ compensation to be imposed.

3. Counsel for the petitioner has relied upon a decision of the Supreme Court of India in the case of ***Perena Sahygo v/s Authority under Minimum Wages and Others (2001) 9 SCC 247***. In that case, the authority had found ulterior motives in the employer's conduct and directed it to pay 8 times the 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. It was of the view that the award of compensation in that case was exorbitant; and that in the circumstances, it should be equivalent to the amount of the balance, unpaid wages awarded by the Authority. It was, therefore, 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 in that case was modified to that extent.

4. In the case at hand, I find that the total difference in the wages payable to the respondent comes to Rs. 35,505.80 only. While there is no gainsaying the fact that Section 20 (3) (i) permits the authority to direct compensation of such amount as it deems fit, not exceeding 10 times the amount by which the minimum wages payable to the workman exceed the amount actually paid, it is obvious that a wide discretion has been left with the authority for quantifying any such amount. Although the Minimum Wages Act does not specify how the discretion is to be exercised, such discretion is not unlimited. According to **Black's Law Dictionary**, the term, "discretion" or to put it more aptly, "judicial and legal discretion", is applied to the discretionary action of a judge or court, and mean discretion bounded by rules and principles of law, and not arbitrary, capricious or unrestrained action. It is not the indulgence of a judicial whim, but the exercise of judicial judgment, based on facts and guided by law, or the equitable decision of what is just and proper under the circumstances. It is a legal discretion to be exercised in discerning the course prescribed by law and is not to give effect to the will of the judge, but to that of the law. In a case under the Minimum Wages Act, a Division Bench of Gujarat High Court in **Chief Officer, Bhavnagar Nagarpalika Vs.**

Meghjibhai Ugadbhai & Others (1995) III LLJ 527 Guj held

as follows:-

“Once it is found that the nature of powers to be exercised under Section 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.”

And that:-

“...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 under Section 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 under Section 20 of the Act.”

5. Similarly, on the same issue, a Division Bench of Bombay High Court in ***C.S. Parameswaram Vs. The Authority Under The Minimum Wages Act, 1948 for Nandgoan And Manmad (1969) 71 BOMLR 292*** held that:-

“Section 20 (3)(i) of the Act enables the Authority in the case of payment of wages less than the minimum rates of wages to direct compensation to be paid as the Authority may think fit not exceeding ten times the amount of such excess, and in any other case, a sum not exceeding ten rupees. A reading of this clause shows that there is a discretion in the Authority to award the compensation or not and if it decides to award compensation it is within its discretion to decide what amount it should award. This discretion has to be judicially exercised and all the circumstances connected with the matter i.e., non-payment or delayed payment, must be taken into account. It must be realised that it is not bound to grant compensation. Each case must depend upon the equities of the case. The purpose of making this provision was to see that an employer did not contumaciously refuse to implement the provisions of the Act. There may be, however, 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 any order is made granting compensation in a particular amount.”

6. In ***Priya Darsan Agarbatti Vs. State of M.P. And***

Others (1995) II LLJ 1084 MP a Division Bench of Madhya Pradesh High Court also held that the discretion under Section 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 And Company Vs. Labour Inspector AIR 1968 Pat 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.”

7. As regards the discretion under Section 20(3)(i), it is to be exercised by the Authority with regard to the amount of 'compensation' that may be awarded to the workman. The word compensation has not been defined under the said provision. In ***Houghton Main Colliery Co. Ltd, In re (1956) 3 All ER 300*** it was observed that the word 'compensation' signifies that which is given to recompense an equivalent rendered-damages, on the other hand, constitute the sum of money claimed, or adjudged to be paid as compensation for loss or injury

sustained, the value estimated in money of something lost or withheld. The term 'compensation' etymologically suggests the image of balancing one thing against another. Even in the case of **Chief Officer, Bhavnagar Nagarpalika (supra)** a Division Bench of Gujarat High Court has stated that:-

“It may be noted that what is to be awarded is compensation under the relevant provisions contained in Section 20 of the Act. The word compensation is not defined therein. Its meaning will have therefore to be gathered by means of its usage in the common parlance. Its dictionary meaning, inter alia, connotes the act of compensating and something, especially money, given as a recompense. In the same dictionary the word 'compensate', is defined, inter alia, to mean 'recompense' 'make amends' and 'counter balance'. The dictionary meaning of the term 'recompense', inter alia, is 'make amends to a person for a loss or requite, reward or punish a person in an action. The word 'requite' is referred to in the dictionary, inter alia, to connote 'reward' or avenge (a favour or injury)'. It thus become clear from the above referred meaning of various terms connected with the word 'compensation' that compensation is offered to a person to make amends for some injury or loss caused to him. The person responsible for causing such injury or loss is made liable to pay compensation.”

And that:-

“the compensation awarded under Section 20 (3) (i) of the Act has some penal element therein. It is however not a penalty stricto sensu. The legislature has advisedly used term 'compensation' in contra-distinction with the term penalty in Sub-section (4) of Section 20 of the Act.”

8. Therefore, what is to be kept in mind while awarding such

compensation is the intention behind the provision, which is to compensate the workman, and not to penalize the employer. In the impugned award, the reasoning adopted by it while granting the maximum quantum of compensation, awardable to the respondent shows that the Authority appears to be more inclined to punish the employer, i.e., the petitioner herein, rather than compensating the workman. Though it says that it is a case for awarding the maximum compensation envisaged under the Act, its reasoning reveals that what is termed as “compensation” has, in fact, been imposed as a penalty aimed at deterring public sector employers from paying less than the minimum wages. Furthermore, the payment made to the respondent varied every month, which is obvious from the fact that different amounts were claimed by the respondent for different periods. It is even possible that in some months it went over, or was at least at par with, the minimum wages. The authority should also have considered this peculiar facet of the case while exercising its discretion.

9. The High Court of Gujarat in ***Project Technologist Pvt. Ltd. Vs. P.C. Bhargava and Others (1998) 1 GLR 700*** relying on an earlier decision of Andhra Pradesh High Court in ***Andhra Pradesh State Handloom Weavers Society Vs. Authority under Minimum Wages Act, Warangal 1986 1 LLJ 355*** held that :

“.... It cannot be denied that Section 20(3) of the Act vests a discretion in the authority

to direct payment of compensation, and in deserving cases, it can be equal to ten times of the wages. The exercise of the discretion is not left to the caprice of the Authority. It must be exercised judicially and reasonably. If the facts of a given case show that the authority did not exercise the discretion judiciously, this Court is entitled to interfere with the exercise of discretion...".

10. There is, therefore, no gainsaying the fact that the authority under the Minimum Wages Act exercises quasi judicial powers. It follows therefore that the ratio of all the aforesaid authorities applies with full force in this case also. It appears in the case at hand, the only factor that appears to have weighed with the authority is that the employer was a public sector undertaking. If this is considered sufficient for awarding the maximum compensation that could have been awarded under the statute, it would mean that in every case of a public employer failing to pay the minimum wages to a workman, the maximum amount of compensation payable would have to be imposed automatically. Such an interpretation to my mind is wholly uncalled for. It would amount to creating a special category of employers in whose cases no flexibility whatsoever is available and the maximum awardable compensation must always be granted. Even in the case of **Prerna Sahygo** (supra) where the authority had arrived at a finding that the employer, "has also tried to falsify the Inspector who is also the applicant." And that the employer, "is adamant to pay less wages against the provisions of the Act" and, therefore, concluded that the

employers conduct was vitiated by ulterior motives, still, a direction to pay 8 times the wages awarded as compensation to the workman, was held to be excessive and not sustainable. In the case at hand, the motives of the employer are not questioned.

11. I feel that under the circumstances, the amount of compensation directed by the Supreme Court in the aforesaid case of ***Prerna Sahygo*** (supra) constitutes a good guide to the amount of compensation payable. Accordingly, it is directed that the respondent shall get as compensation, an amount equal to the amount of wages awarded to her, i.e., Rs.35,505.80. She is also entitled to a further amount equal to the difference between the wages actually paid and those payable to her under the Minimum Wages Act, which amount is stated to have already been paid to her by the petitioner. The impugned order of the Authority dated 15th December, 2005 shall stand modified to this extent. The writ petition disposed of accordingly.

C.M. No. 2259/06

12. Since the Writ Petition has been disposed of today, this application is rendered infructuous and the same is disposed of accordingly.

Sudershan Kumar Misra, J.

March 18, 2008
smp