

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C.) No. 3785/2007**

Judgment Reserved on: 22.02.2010

% **Judgment Delivered on: 24.02.2010**

MULTIPURPOSE TRAINING CENTER FOR DEAF

..... Petitioner

! Through: Mr. S.N. Shukla, Advocate.

Versus

\$ GOVT. OF NCT OF DELHI & ORS.

..... Respondents

^ Through: Mr. L.B. Rai & Mr. Rajeev Rai,
Advocates.

CORAM:

HON'BLE MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper 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**

S.N.AGGARWAL, J

The All India Federation of Deaf is a society registered under the Societies Registration Act, 1860 and the said society is affiliated to the World Federation of the Deaf, Helsinki, Finland. The Federation is engaged in providing vocational training to adult deaf boys and girls from all parts of the country in the trades such as computer DTP, tailoring, photography, offset printing, fitter and turner including welding at its institute known as Multipurpose Training Centre for the Deaf. It has separate hostel blocks for boys and girls. Sign language classes are also organised by Federation. The petitioner employs workers on different

posts i.e. Proof Reader, Peon, MC man, Ink man, Winder, Instructor, Sweeper and Accountant. The petitioner establishment was paying the salary at the rate of minimum wages to its workers till 31.07.2002 and thereafter the management stopped paying minimum wages to the workers on the ground that the Minimum Wages Act, 1948 is not applicable to their establishment.

2 The workers of the petitioner establishment through Delhi Mazdoor Union (Regd.) filed a claim application on 17.03.2005 under Section 20 of the Minimum Wages Act, 1948 before the Authority under the Minimum Wages Act and claimed arrears of Rs.90,759.60 paise with interest @ 12% per annum on account of difference of minimum wages admissible to them for the period from 01.08.2002 till 31.01.2005. The Authority under the Act vide its order dated 07.09.2006 ordered the management of the petitioner to pay Rs.24,924/- on account of difference of minimum wages for the period from 01.08.2004 to 31.01.2005 to the 17 workmen named in the order along with Rs.500/- as penalty to each of these workmen.

3 The petitioner establishment has filed this writ petition under Article 226 of the Constitution of India for quashing of order dated 07.09.2006 passed by respondent No. 2 Mr. S.P. Singh, Deputy Labour Commissioner, Authority under the Minimum Wages Act, 1948. The said order of the Competent Authority is sought to be set aside mainly on the ground that the petitioner establishment is not included in the list of scheduled employment either in Part-I or Part II of the Schedule.

4 Respondent No. 3 who were the employees/workers of the petitioner establishment have filed their counter affidavit in response to notice of the present writ petition and in their counter affidavit, they have

taken a preliminary objection to the maintainability of the present writ petition. According to the workmen, the impugned order passed by the Authority under the Minimum Wages Act, 1948 does not suffer from any jurisdictional error and, therefore, cannot be interfered with this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The workmen have further taken a plea that the impugned order has been passed by the respondent No. 2 on the basis of comprehensive evidence produced by the parties before it. Since the said order is stated to have been passed after appropriate and proper application of mind after considering the evidence of the parties, it is pleaded that the said order needs no interference by this Court under Article 226 of the Constitution. According to the workmen, they are covered under the Minimum Wages Act and are entitled to the benefits of the said Act. It is stated that the workmen cannot be deprived of the bare minimum necessity of the minimum wages as prescribed under law. They have prayed for the dismissal of the present writ petition and for confirmation of the impugned order dated 07.07.2006 passed by the Authority under the Minimum Wages Act, 1948.

5 I have heard the arguments of the learned counsel for both the parties and have also gone through the written arguments filed by them. I have also perused the entire case file with utmost care.

6 The only short question that arises for consideration in the present writ petition is whether the establishment of the petitioner is covered by the provisions of the Minimum Wages Act, 1948 and if so, whether its workers are entitled to get minimum wages as fixed by the Government from time to time.

7 Mr. S.N. Shukla, learned counsel appearing on behalf of the

petitioner, had referred to and relied upon two judgments of the Hon'ble Supreme Court in ***Lingegowd Detective & Security Chamber (P) Ltd. Vs. Mysore Kirloskar Ltd. & Others reported as (2006) 4 SCC 180*** and in ***Secretary Padippu K.S. Sangam Ltd. Vs. C. Varghese, reported as IV (2007) SLT 227***. On the strength of these two judgments, he had argued that since the establishment of the petitioner is not included either in Part I or Part II of the Schedule, the minimum wages in respect of the said establishment cannot be fixed under the said Act. According to Mr. Shukla, the impugned order directing the petitioner to pay minimum wages to its workmen suffers from jurisdictional error as, according to him, the minimum wages could not have been fixed under the Act in respect of employees of an establishment which is not a scheduled employment as defined in the Minimum Wages Act, 1948. It was submitted by him that the appropriate Government can include any establishment in the category of scheduled employment through notification in exercise of its powers under Section 27 of the Act. Since, according to him, the establishment of the petitioner does not fall in the category of scheduled employment, the impugned order directing it to pay minimum wages to its workmen is liable to be set aside by this Court.

8 Per contra, Mr. L.B. Rai, learned counsel on behalf of the workmen, had argued that the petitioner is engaged in the business of imparting education to the deaf community and is also running a printing press. The said establishment, according to him, falls within the ambit of definition of 'commercial establishment' given in Section 2(5) of the Delhi Shops & Establishments Act, 1954. He had placed reliance on a notification dated 13.08.1965 issued by the Government of NCT of Delhi under Section 27 of the Minimum Wages Act by which an amendment was made in the Schedule to the Minimum Wages Act, 1948 and had

thereby brought employment in all shops and other establishments covered by the Delhi Shops & Establishments Act, 1954 within the ambit of scheduled employment under the Minimum Wages Act, 1948. It was submitted by Mr. Rai that the Authority under the Minimum Wages Act, 1948, which has passed the impugned order, has returned a finding of fact in the said order that the establishment of the petitioner is covered by the Delhi Shops & Establishments Act, 1954 and, according to him, this finding of fact contained in the impugned order should not be interfered with by this Court exercising its jurisdiction under Article 226 of the Constitution of India. It was submitted by him that the workmen are entitled to minimum wages which they require to keep their body and soul together.

9 I have given my anxious consideration to the above rival arguments advanced by the learned counsel for both the parties.

10 It will be necessary to first notice the relevant provisions of the Minimum Wages Act which are extracted below:

“Section 2

(e) "employer" means 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 rates of wages have been fixed under this Act and includes except in sub-section (3) of section 26

(i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act any person named under clause (f) of sub-section (1) of section 7 of the Factories Act 1948 (63 of 1948) as manager of the factory;

(ii) in any scheduled employment under the control of any government in India in respect of which minimum rates of wages have been fixed under this Act the person or authority appointed by such government for the supervision and control of employees or where no person or authority is so appointed the head of the department;

(iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act the persons appointed by such authority for the supervision and control of employees or where no person is so appointed the chief executive officer of the local authority;

(iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act any person responsible to the owner for the supervision and control of the employees or for the payment of wages;

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

(i) "employee" means any person who is employed for hire or reward to do any work skilled or unskilled manual or clerical in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up cleaned washed altered ornamented finished repaired adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate government; but does not include any member of the Armed Forces of the Union.

27. Power of State Government to add to Schedule -

The appropriate government after giving by notification in the Official Gazette not less than three months' notice of its intention so to do may by like notification add to either Part of the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act and thereupon the Schedule shall in its application to the State be deemed to be amended accordingly. "

11 It is no doubt true that the Hon'ble Supreme Court in its judgments in Lingegowd Detective & Security Chamber (P) Ltd's case and in C. Varghese's case (supra) has held that the minimum wages can be fixed under the Act only in respect of those establishments which fit in the definition of 'scheduled employment' given in Section 2(g) of the Act and not in respect of any other establishment. However, in the present case, the appropriate Government in the Government of NCT of Delhi exercising its powers under Section 27 of the Minimum Wages Act had issued a notification dated 13.08.1965 and by the said notification an amendment was made in the Schedule to the Act and Item 15 was introduced. This notification reads as under:

“NOTIFICATIONS

Delhi, the 13th August, 1965

No. F.40(10/64-Lab.-In exercise of the powers conferred by sub-section (1) of section 51 of the Madras Chit Funds Act, 1961, as extended to the Union Territory of Delhi, the Administrator of Delhi is pleased to appoint Shri M.K. Seth, as Inspecting officer for the purpose of the said act and the Rules made thereunder, with effect from the 9th July, 1965.

2. The Administrator is further pleased to direct that the appointment of Shri J.L. Kotru as Inspecting Officer vide this administration Notification of even number, dated the 9th October, 1964 shall be deemed to have been cancelled with effect from the 3rd may, 1965.

No. F. 21(19)/64-Lab- In exercise of the powers conferred by section 27 of the Minimum Wages Act, 1948 (XI of 1948), read with the Government of India, Ministry of Labour Notification No. L.P. 24(1) dated the 16th March, 1949, the Chief Commissioner, Delhi, being of opinion that minimum rates of wages should be fixed under the said Act in respect of employment in all shops and other establishments to which the Delhi Shops and Establishments Act, 1954, applies and after giving three months' notice of his intention so to do, vide his notification of even number, dated the 5th January, 1965, is pleased to make the following amendment in the Schedule appended to the said Act, namely:-

Amendment

In Part I of the said Schedule, after item 14 the following new item shall be added, namely:-

“15. Employment in all shops and other establishments, covered by the Delhi Shops and Establishments Act, 1954.””

12 The above notification dated 13.08.1965 by which employment in all shops and other establishments covered by the Delhi Shops & Establishments Act, 1954 were brought within the ambit of scheduled employment under the Minimum Wages Act, 1948 is not disputed by Mr. Shukla, learned counsel appearing on behalf of the petitioner.

13 Section 2(5) of the Delhi Shops & Establishments Act, 1954 is relevant for the purpose of the present case and the same reads as under:

“(5) "commercial establishment" means any premises wherein any trade, business or profession or any work in connection with, or incidental or ancillary thereto is carried on and includes a society registered under the Societies Registration Act, 1860 (21 of 1860), and charitable or other trust, whether registered or not, which carries on any business, trade or profession or work in connection with, or incidental or ancillary thereto, journalistic and printing establishments, contractors and auditors establishments, quarries and mines not

governed by the Mines Act, 1952 (35 of 1952), educational or other institutions run for private gain, and premises in which business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on, but does not include a shop or a factory registered under the Factories Act, 1948 (43 of 1948), or theatres, cinemas, restaurants, eating houses, residential hotels, clubs or other places of public amusements or entertainment;”

14 On a perusal of Section 2(5) read alongwith the notification dated 13.08.1965 extracted above, it is clear that the establishment of the petitioner comes within the purview of scheduled employment provided for in the Minimum Wages Act, 1948.

15 At this stage, it shall be significant to refer to the relevant portion of the impugned order dated 07.09.2007 which is extracted below:

“I have heard the arguments and gone through the documents filed by both the parties. It is pertinent to mention that the management is running the institute for deaf and charging the fee from the students. They are also getting grants/donations from Government and other agencies and also earning through property. In my opinion, minimum wages are just to keep the workman survived and to keep the soul and body intact. And there is no wages less than the minimum wages can be fixed by the Government or authority. There could not be any bargaining in the minimum wages, it was just to keep the workman survived. This establishment is an establishment under Delhi Shops and Establishment Act which unilaterally covered as an industry where the minimum wages are applicable.

The claim of the claimants have been allowed w.e.f. 01.08.2004 to 31.01.2005 as per the details given below:-

S. No.	Name	Designation	Present Salary (Rs.)	Minimum wages applicabl e (Rs.)	Differenc e	Calculation (Rs.)
1	K.L. Bhaumik	Proof Reader	3091	3343	252	252X6=Rs.1,512/-
2	Vinod Sharma	M/C Man	3091	3319	228	228X6=Rs.1,368
3	Gulab Chand	Peon	2667	2895	228	228X6=Rs.1,368
4	Jai Kishan	Inkman	2883	3319	436	436X6=Rs.2,616/-
5	Jit Pal	Binder	2883	3061	178	178X6=Rs.1,068/-
6	Sarojini M.	Retoucher	1986	3319	1333	1333X6=Rs.7,998/-
7	Birender Singh	Peon	2667	2895	228	228X6=Rs.1,368/-
8	Ram Kishan	Sweeper	2667	2895	228	228X6=Rs.1,368
9	Ranjeet Makkar	Instructor	3427	3343	84	84X6=Rs.504/-
10	Madhu Saini	--do--	3427	3343	84	84X6=Rs.504/-
11	N.N. Rai	--do--	3427	3343	84	84X6=Rs.504/-
12	Ashok Narula	Accountant	3566	3655	89	89X6=Rs.534/-
13	Vergese M.D.	Instructor	3427	3343	84	84X6=Rs.504/-

S. No.	Name	Designation	Present Salary (Rs.)	Minimum wages applicabl e (Rs.)	Differenc e	Calculation (Rs.)
14	Gianender Sharma	--do--	3427	3343	84	84X6=Rs.504/-
15	Raj Kumar Jha	--do--	3427	3655	228	228X6=Rs.1,368/-
16	Shyambabu Singh	--do--	3427	3349	78	78X6=Rs.468/-
17	Prem	Sweeper	2667	2895	228	228X6=Rs.1,368
					Total	Rs.24,924/-

Accordingly the respondent/ management is directed to make the payment of Rs.24,924/- (Rs. Twenty thousand nine hundred & twenty four only) along with Rs.500/- as penalty to each workman/claimant to the claimant Sh. K.L. Bhaumik & others, C/o Delhi General Mazdoor Union (Regd.) B-89, Gulmohar Park, New Delhi-110049 within 30 days from the date of receipt of this order.”

16 The object and policy of the Legislature in enacting the Minimum Wages Act is to prevent exploitation of the workers and, for that purpose, it aims at fixation of minimum wages which the employer must pay. The Legislature undoubtedly intended to apply the Act to those industries or localities in which by reason of causes such as unorganised labour or absence of machinery for regulation of wages, the wages paid to workers were, in the light of the general level of wages, and subsistence level, inadequate. Conditions of labour vary in different industries and from locality to locality, and the expediency of fixing minimum wages, and the rates thereof depends largely upon diverse factors which in their very nature are variable and can properly be ascertained by the Government which is in charge of the administration of the State. It is to carry out effectively the purpose of this enactment that power has been given to the appropriate Government to decide, with reference to local conditions, whether it is desirable that minimum wages should be fixed in regard to any scheduled trade or industry, in any locality, and if it be deemed expedient to do so, the rates at which the wages should be fixed in

respect of that industry in the locality.

17 Since the workmen, in the present case, have established their plea on the basis of notification of the Government dated 13.08.1965 that the petitioner's establishment where they are working is covered by the definition of 'scheduled employment' within four corners of the Minimum Wages Act, 1948, they cannot be denied minimum wages ordered to be paid to them vide impugned order. In fact, the management of the petitioner itself had admitted in its pleadings filed before the Authority under the Minimum Wages Act that it was paying salary at the rate of minimum wages to its workers till July 2002 and had no objection to the payment of minimum wages to them even thereafter but was not ready to give benefit of increase of wages from time to time.

18 In the opinion of this Court, once it is proved that the establishment where the workmen are working is covered by the Minimum Wages Act, 1948, the management cannot deprive them the benefit of minimum wages revised by the Government from time to time.

19 In view of the foregoing, I do not find any reason to interfere with the impugned order passed by the Authority under the Minimum Wages Act, 1948. This writ petition therefore fails and is hereby dismissed but with no order as to Costs.

FEBRUARY 24, 2010
a/bsr

S.N.AGGARWAL
[JUDGE]