

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

Judgment delivered on: 30th November, 2010

+ **LPA 288/2010**

MULTIPURPOSE TRAINING CENTRE
FOR THE DEAF

..... Appellant
Through Mr.S.N. Shukla, Adv.

versus

GOVERNMENT OF NCT OF DELHI & ORS Respondents
Through Mr.Rajeev Kr. Rai, Adv. R-3

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

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| 1. Whether reporters of the local papers 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 |

DIPAK MISRA, CJ

In this intra-court appeal, the challenge is to the order dated 24th February, 2010 passed by the learned Single Judge in WP (C) No. 3785/2007.

2. The singular question that emanates for consideration in this appeal is whether the appellant – All India Federation of Deaf can be allowed to pay to the workers less than the minimum wages on the ground that it is not included in the list of scheduled employment either in Part-1 or Part-2 of the Schedule of the Minimum Wages Act, 1948 (for brevity ‘the Act’).

3. We have heard Mr.S.N. Shukla, learned counsel for the appellant and Mr.Rajeev Kr. Rai, learned counsel for the respondent No.3.

4. On a perusal of the order passed by the learned Single Judge, it is evincible that the appellant-society is engaged in imparting education to the deaf community and is also running a printing press. The said establishment falls in Section 2(5) of the Delhi Shops and Establishments Act, 1954, which defines the “commercial establishment”. It reads as follows: -

“2. Definitions.

(1) to (4) xxx xxx xxx

(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 (53 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 (63 of 1948) or theatres, cinemas, restaurants, eating houses, residential hotels, clubs or other places of public amusement or entertainment.”

5. It is also noticeable that a notification dated 13th August, 1965 has been issued by the Government of NCT of Delhi under Section 27 of the Act by which an amendment has been incorporated in the Schedule to the Act whereby the shops and other establishments covered under the Delhi Shops and Establishments Act, 1954 come within its sweep and ambit. Sections 2

and 27 of the said Act read as follows: -

“Section 2 – Interpretation.

(a) to (d) xxx xxx xxx

(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;

(f) xxx xxx xxx

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

(h) xxx xxx xxx

(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 month's 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.

Notification issued by the Delhi Government is as follows: -

“NOTIFICATIONS

Delhi, the 13th August, 1965

No. F.40(10/64-Lab.-In exercise of the powers conferred by subsection (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.”

6. In view of the aforesaid, we are of the view that Section 25 of the Delhi Shops and Establishment Act, 1954, which has been incorporated in the notification, would cover the benefits that are accruable under the Act.

7. In this regard we may refer with profit to the decision in *Bijay Cotton Mills Ltd. v. State of Ajmer*, AIR 1955 SC 33 wherein it has been held as follows:

“It can scarcely be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but also the maintenance of health and decency, is conducive to the general interest of the public. This is one of the Directive Principles of State Policy embodied in Art.43 of the Constitution. The material provisions of the Minimum Wages Act are not therefore illegal and ultra vires, as the restrictions imposed by them, though they interfere to some extent with the freedom of trade or business guaranteed under Art.19(1)(g) of the Constitution, are reasonable and being imposed in the interest of the general public are protected by the terms of clause (6) of Art.19.”

[Quoted from the placitum]

8. In *Express Newspaper Ltd. v. Union of India*, AIR 1958 SC 578, it has been held that most employers and some Provisional Governments consider that the 'minimum wage' can at present be only a bare subsistence wage. But according to the concept of 'minimum wage' adopted by the Committee on Fair Wages, a minimum wage must provide not merely for the bare sustenance of life but for the preservation of the efficiency of the worker. For this purpose, the minimum wage must also provide for some measure of education, medical requirements and amenities.

9. In *Y.A. Mamarde & Ors. v. Authority under the Minimum Wages Act*, (1972) 2 SCC 168, while dealing with a decision arising from the High Court of Bombay under the Act, the Apex Court has opined that fixing the minimum wages for overtime work at double the rate of wages actually received by the workmen should not be considered to be outside the purpose and object of the Act and viewing it harmoniously with the general scheme of industrial legislation in the country in the background of the Directive Principles contained in our Constitution, the minimum rates of wages for overtime work should as a matter of law be confined to double the minimum wages fixed.

10. In view of the aforesaid, the employees employed by the appellant-society are entitled to get the benefit and hence, we perceive no error in the

order passed by the learned Single Judge.

11. In the result, the appeal, being devoid of merit stands dismissed without any order as to costs.

CHIEF JUSTICE

NOVEMBER 30, 2010
kapil

MANMOHAN, J