

IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA No.369/2003

Judgment delivered on: 20.01.2011

M/S. TOOL ROOM & TRAINING CENTRE Appellant
Through: Mr.R.K.Saini, Advocate.

Versus

M/S. DELHI INDUSTRIAL SECURITY GUARDS
(REGD.) Respondent
Through: Mr.Rajesh Kumar Chaurasia,
Advocate.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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

KAILASH GAMBHIR, J. Oral:

1. By this appeal filed under Section 96 of the Code of Civil Procedure, 1908 the appellant, which is a Centre established by the Government of NCT of Delhi seeks to challenge the judgment and decree dated 22nd January, 2003 passed by the learned Trial Court whereby the suit for recovery filed by the respondent was decreed in favour of the respondent and against the appellant for a sum of Rs. 3,94,229/- with pendente lite and future interest @12% p.a. from the date of filing of the suit till realization.

2. Brief facts of the case relevant for deciding the present appeal are that the appellant employed the services of the respondent company vide agreement dated 3.10.1984 for providing two security guards for three shifts for an amount of Rs. 3795/-. That the agreement was initially for a period of three months but was extended mutually from time to time till it was terminated by the appellant on 31.1.1999. That a legal notice dated 15.4.1999 was served upon the appellant by the respondent claiming the differential amount of the minimum

wages paid to the security guards. Thereafter the respondent filed a suit for recovery which vide judgment and decree dated 22.1.2003 was decreed in favour of the respondent for Rs. 3,94,229 with pendente lite and future interest @12% p.a. Feeling aggrieved with the same, the appellant has preferred the present appeal.

3. Assailing the order of the learned Trial Court, Mr. R.K. Saini, learned counsel for the appellant contended that both the parties were bound by the terms of the agreement dated 3rd October, 1984 and in terms of para 3 of the agreement the appellant was only liable to pay the agreed amount of Rs. 3795/- per month for providing the services of two security guards for three shifts. Counsel further submits that so far the payment of minimum wages to the guards deployed by the respondent was concerned, the same was the duty of the respondent and not of the appellant since the said security guards were under the employment of the respondent and not that of the appellant. Counsel further

submits that even in the evidence, the respondent has admitted the fact that no claim was filed by the said security guards to claim minimum wages from the respondent. Counsel also submits that the said agreed amount was accepted by the respondent right from the date of inception of the agreement till 30th January, 1999 when the said agreement was terminated by the appellant. Counsel further submits that it is only after the termination of the said agreement that the respondent had preferred to raise its claim towards the differential amount between the amount paid and the minimum wages. Counsel also submits that the suit of the respondent was based on the claim not belied by the agreement between the parties. In support of his arguments, counsel placed reliance on the illustration (f) of Section 25 of the Indian Contract Act, 1982.

4. Refuting the said submission of counsel for the appellant, Mr. Rajesh Kumar Chaurasia, learned counsel appearing for the respondent submits that the respondent in the suit has claimed differential amount i.e. the amount paid

by the appellant and the amount of minimum wages w.e.f. 30th June, 1996 till 31st August, 1998 and from 30th September, 1998 till 31st January, 1999, as per the Minimum Wages Act. Counsel for the respondent also submits that the amount of Rs. 3795/- was agreed between the parties based on the minimum wages as applicable during that period. Counsel also submits that the respondent had been paying an amount of 3795 i.e Rs.575 (Rs. 400/- towards the salary of the security guards while an amount of Rs. 55/- towards statutory dues such as PF, ESI and Rs. 120/- for bonus, E.L , other leaves) plus 10% service charges which totals to Rs 3795/ for 6 employees. The submission of counsel for the respondent is that the appellant was fully conscious of the fact that the said amount of Rs. 3795/- was settled keeping in view the minimum wages as were then applicable. Counsel for the respondent also submits that as and when there was raise in the minimum wages the respondent had raised the bills accordingly. Counsel also submits that there were three revisions in the minimum wages between the

period 1984 to 1999 and that the respondent had submitted the bills in accordance with the revision in the minimum wages. Counsel further submits that in terms of Clause 4 of the agreement, the respondent was responsible to pay ESI, EPC, etc. to the concerned department and under no circumstances the respondent could have paid the said amounts without paying the minimum wages to the said security guards. Counsel also submits that the agreement of the respondent was terminated by the appellant without giving one month's notice as agreed between the parties in terms of clause 9 of the agreement. Counsel for the respondent further submits that the appellant in para 4 of the present appeal has admitted the fact that the enhanced payment was made by the appellant @ Rs. 4959/-. Counsel thus states that the appellant had again reverted back to the same old rate even after once having agreed to enhance the amount as per the minimum wages which were then applicable.

5. I have heard learned counsel for the parties at considerable length and gone through the records. The Court has also perused the original records produced by the counsel for the appellant during the hearing of the case.

6. It is not in dispute between the parties that through a written agreement dated 3rd October, 1984 the appellant had given the contract to the respondent to provide two security guards for three shifts w.e.f. 3rd October, 1984. It is also not in dispute between the parties that the said security guards were provided by the respondent without any sort of complaint from the side of the appellant in this regard. The controversy arose between the parties only on account of the fact that as to whether the appellant was liable to revise the wages of the security guards with the revision under the Minimum Wages Act, 1948 or the appellant was only liable to pay the amount in lump sum as agreed between the parties strictly in terms of the agreement dated 3rd October, 1984. Before I carry on the discussion further on this

aspect, it would be appropriate to reproduce the relevant terms of the agreement dated 3.10.1984 as under:-

“3. That the second party will be responsible to pay salary; overtime; leave wages; sick leave; casual leave earned leave; provide uniform; and all other facilities under the law or otherwise under the rules, to the Security Guards supplied to the First Party.

4. That the second party will be responsible to pay full ESI, CPF etc. to the Deptt. concerned directly

5. That the second party will be paid a gross amount of Rs. 3795/- per month for providing the services of the Guards. The First party will make payment to the second party on or before 4th day of the following month provided the bill is received at the last day of the month of service.

6. That the second party will maintain all the security registers and other documents as per requirement of the First party.

9. That this agreement is for three months initially but can be extended for further period as may be required. Either party may terminate agreement by giving one month's notice in writing.”

7. The learned Trial Court based on the pleadings of the parties and the evidence led by both the parties in support of their respective stands, reached to the conclusion that the

appellant is a body run by the Government of NCT of Delhi and, therefore, it ought to have followed the Gazette Notifications issued by the Labour Department of Government of NCT of Delhi revising the minimum wages from time to time. The learned Trial Court also observed that the appellant being a Government body should not have defied the provisions of the Minimum Wages Act based on an invalid agreement dated 3rd October, 1984. The learned Trial Court also placed reliance on Section 23 of the Indian Contract Act and opined that “lawful consideration” referred to in Section 10 of the Indian Contract Act has been defined further in Section 23 of the Contract Act, which means that consideration or object of an agreement is lawful unless the same is forbidden by law. The learned Trial Court also placed reliance on the judgment of the Allahabad High Court in ***Nutan Kumar vs Second ADJ, Banda AIR 1994, All 298*** wherein it was held that an agreement offending the statute or public policy or forbidden by law is not merely void but it is invalid from nativity. This Court does not find any infirmity or

any kind of illegality and perversity in the reasoning given by the learned Trial Court. The perusal of the original record produced by the appellant also shows that the respondent had been submitting bills from time to time in accordance with the raise in the minimum wages under the Minimum Wages Act, but every time the request of the respondent was being declined by the appellant on the ground that there was no such agreement between the parties to pay the amount to the respondent in terms of the Minimum Wages Act.

8. A perusal of the original records also reveals that the amount was once raised from Rs. 3795/- to Rs. 4959/- but again the appellant reverted back to the previous amount as spelled out in the original agreement. The appellant being a Government body cannot take a stand that they are not liable to pay the amount to the respondent in terms of the minimum wages. It is rather the duty of the Government to see that every employer pays wages in consonance and conformity with the Minimum Wages Act. Although the respondent did not place any material on record to show that it has been

paying the minimum wages to the said security guards but considering the fact that the respondent has taken the plea that it was paying the other statutory dues to the security guards deployed by it, therefore, it can be safely assumed that the respondent must have been paying the wages as per the Minimum Wages Act otherwise the proceedings against the respondents itself could have been initiated for violating the provisions of Minimum Wages Act. The appellant continued to take the services of the respondent till 1999 although the initial agreement was for a period of three months and this itself shows that the appellant was fully satisfied with the services rendered by the respondent. It can also be safely assumed that in the agreement dated 3rd October, 1984 although there is no term which could decipher that the appellant had agreed to pay the wages as per the Minimum Wages Act, but the amount as was agreed between the parties was certainly based on the minimum wages as were then applicable. It is thus quite evident that both the parties were conscious of this fact as to rate of minimum wages in force as

on the date of the execution of the agreement and, therefore, the appellant being a Government body ought to have agreed to pay the respondent the revised amount after calculating minimum wages as were raised by the Government through various Gazette Notifications from time to time.

9. The Minimum Wages Act, 1948 is a beneficial piece of social legislation and minimum wages are the fundamental premises of decent remuneration. The act was brought on the statute book with the object to stop exploitation of the workers and aim at fixation of a minimum wage for the workers in consonance with the aim of social justice. Earlier on there was scepticism about the validity and the realistic effect of the legislation, but the object of the act was able to dispel the uncertainties thus proving that it is here to stay and is an inevitable part of the obligations of a welfare state. It would be relevant to reproduce the observations of the Apex Court ***in Y.A Mamarde vs. Authority under the Minimum Wages Act (1972) 2 SCC 108*** where the aim of enacting the act was stated in the following words:

"The Act which was enacted in 1948 has its roots in the recommendation adopted by the International Labour Conference in 1928. The object of the Act as stated in the preamble is to provide for fixing minimum rates of wages in certain employments and this seems to us to be clearly directed against exploitation of the ignorant, less organised and less privileged members of the society by the capitalist class. This anxiety on the part of the society for improving the general economic condition of some of its less favoured members appears to be in supersession of the old principle of absolute freedom of contract and the doctrine of laissez faire and in recognition of the new principles of social welfare and common good. Prior to our Constitution this principle was advocated by the movement for liberal employment in civilised countries and the Act which is a pre-Constitution measure was the offspring of that movement. Under our present Constitution the State is now expressly directed to endeavour to secure to all workers (whether agricultural, industrial or otherwise) not only bare physical subsistence but a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure. This Directive Principle of State Policy being conducive to the general interest of the public and, therefore, to the healthy progress of the nation as a whole, merely lays down the foundation for appropriate social structure in which the labour will find its place of dignity, legitimately due to it in lieu of its contribution to the progress of national economic prosperity."

Therefore, the minimum wages are guaranteed irrespective of the capacity of the employer to pay to ensure the worker not only his sustenance and that of his family but also the preservation of his efficiency as a worker. It is the solemn duty of every instrumentality of the State to guarantee minimum wages to its workforce and no such instrumentality

can set it off by making a contract to the contrary. It cannot be lost sight of the fact that the guarantee of minimum wages to the workforce is the hallmark of a progressive nation state and the appellant being a society under the aegis of the Government of NCT of Delhi cannot digress from its social and statutory obligation.

10. In the light of the above discussion, I do not find any merit in the present appeal. The same is hereby dismissed.

January 20, 2011
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KAILASH GAMBHIR, J