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

+ Date of Decision: 03 .05.2013

% **W.P.(C) 2771/2013 & C.M. No.5220/2013**

TOPS SECURITY LTD ..... Petitioner
Through: Mr. K.C Dubey & Mr. Atul Tripathi, Advocates.

versus

TOPS DETECTIVE AND SECURITY SERVICES LTD, KARAMCHARI UNION (REGD) ..... Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (ORAL)

1. By the present petition, filed under Articles 226 and 227 of the Constitution of India, the petitioner seeks to challenge the order dated 19.01.2012, passed by the Authority appointed under the Minimum Wages Act, 1948 (the Act). The Authority vide the said order held that the petitioner is liable to pay Rs.1,818/- and Rs.2,040/- together with five times penalty of the due amount to each category of the claimants i.e. the security guards and security supervisors within 30 days of the impugned order.

2. The background facts of the case may be noted. The petitioner is a Security Service Provider and the Respondent is its registered Karamchari Union. In March 2006, the respondent through its General Secretary filed an application under Sec 20 of the Act complaining of payment of less

wages for the period 01/08/2005 to 31/01/2006, and release of the difference in wages to the workmen. After hearing the parties, the Authority passed the order impugned herein.

3. The learned counsel for the petitioner submits that the petitioner is not liable to pay the minimum wages to its workers, because the activity of providing security guards is not a "scheduled employment" as defined in Sec 2(g) of the Act - in respect of which, minimum rates of wages have been fixed. It is contented that there is no notification issued under Section 27 of the Act by the appropriate Government to include the activities of the petitioner in the Schedule to the Act. Therefore, the activities of the petitioner cannot be characterized as a Scheduled Employment. Ld Counsel for the petitioner also relies on the judgment of the Supreme Court in case of ***Lingegowd Detective Agency and Security Chamber (P) Ltd & Ors v Mysore Kirloskar***, 2006 (5) SCALE 227 to submit that the activity of providing security personnel is not covered by the schedule to the Act.

4. The petitioner contends that it cannot be made responsible to pay minimum wages solely on the basis of notification No. F.12(22)/88-MW/Lab. dated 28/04/1989, relied upon by the Authority, which has brought "establishments" situated within the jurisdiction of Delhi under the ambit of the Act. He submits that the categories of unskilled, semi skilled, skilled, clerical and supervisory workmen in respect of whom the said notification has been issued, have been set out in the said notification, but security guards and the supervisors are not included in any of these categories.

5. Learned counsel for the petitioner finally submits that the petitioner makes all endeavour to negotiate and charge minimum wages from the client to whom the services of security guards and supervisors are provided, and pays the same to the security guards and supervisors, if and when, the petitioner receives the Minimum Wages. It sometimes pays even more than the Minimum Wages, as and when, it is able to secure the same from its clients. The petitioner submits that it is sometimes constrained to pay less than the minimum wages to the Security Guards and Security Supervisors, as its clients do not pay more than what has already been agreed in the agreement, while the minimum wages are revised from time to time as notified by the Government. The Petitioner submits that it cannot press its clients to pay more, for fear of losing its business.

6. Having considered the submissions of the petitioner, and having perused the impugned order, the record and decision relied upon by the petitioner, I am of the view that the present petition has no merit and is liable to be dismissed.

7. I completely agree with the findings of the Authority appointed under the Act that the petitioner is liable to pay minimum wages to the Security Guards and Security Supervisors. The Authority has dealt with the aspect in great detail, and I fully concur with the same.

8. The argument that the activities of the Petitioner does not constitute a Scheduled Employment is clearly unacceptable in view of the notification dated 13.08.1965 bearing No.F.21(19)/64-Lab issued by Government of India under Section 27 of the Act which brings all the establishments

covered by Delhi Shops and Establishments Act, 1954 (DSE Act) under the purview of Act. This notification has been taken note of by this Court in ***Multipurpose Training Centre for the Deaf v. Govt. of NCT of Delhi***, 2011 LLR 548 (DB). The said notification reads as follows:

> "*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 Shop 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 of the following new item shall be added, namely:-*
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> *15. Employment in all shops and other establishments, covered by the Delhi Shops and Establishments Act, 1954*."

9. I may observe that this notification is not the one relied upon in the impugned order. The impugned order relies on a notification dated 28.04.1989 also issued under Section 27 of the Act. However, that notification has not been produced before this Court. What has been produced appears to be only an extract containing the "SCHEDULE" as printed in some text book. The same is of no avail.

10. Sec 2(9) of the DSE Act defines ***"establishment"*** as, "a *shop, a commercial establishment, residential hotel, restaurant, eating house,*

theatre or other places of public amusement or entertainment to which this act applies…." Further, Section 2(5) of the DSE Act defines ***"commercial establishment"*** as ""*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;"*(emphasis supplied)

11. The definition of "commercial establishment" has been elaborately explored by a Division Bench of this Court in ***Delhi Council for Child Welfare v Sheela Devi & Anr.,*** *132 (2006) DLT 696*. The Court was examining the issue whether the Delhi Council for Child Welfare is covered by the provisions of the DSE Act. This issue arose in the same manner as in the present case. In that case also, the Appellant Delhi Council for Child Welfare was held liable to pay the minimum wages to its employees. Rejecting the appellants submission that it was not a

commercial establishment under Section 2(5) of the DSE Act, and that it is not carrying on any activity which is covered by the Schedule I or II or any notification issued under the Act – in the light of the notification dated 13.08.1965, the Court observed as follows:

> "*Although the expression sought to be defined under Section 2(5) of the Shops Act is that of a 'commercial establishment', what is contained in the definition is indicative of the wide sweep of those words. The definition is an inclusive one and expressly includes 'a society registered under the Societies Registration Act, 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.' We may add that the word 'work' is wide enough to include the activities of an organization like that of the appellant before us. If even a charitable trust which obviously would not be engaged in any commercial activity for profit is expressly included in this definition, as is a Society, we see no reason why it would not include the appellant. It may also be noticed that latter part of the definition excludes certain types of establishments. In other words, the definition expressly states that it 'does not include a shop or a factory registered under the Factories Act, 1948,' theatres, cinemas, hotels, eating houses, restaurants, health clubs or other places of public amusement or entertainment.' The purpose of this exclusion is that, but for such an exclusion these establishments would otherwise be included in the definition. If it was the legislative intension to expressly exclude establishments like that of the appellant, then that would have been expressly stated in the definition itself. The absence of such an exclusion has to be construed to mean that organizations and establishments like that of the appellant would fall in inclusive ambit of definition*."

12. On a plain reading of the definition of "commercial establishment" contained in the DSE Act, it is clear that the petitioner is a commercial establishment. Consequently, the Petitioner squarely falls under the

purview of the Act and is therefore bound to pay minimum wages in its establishment.

13. Further, the petitioner was never in doubt about the applicability of the Act to its establishment. It is clear from their own documents filed by the petitioner before the Authority appointed under the Act, that the Petitioner is collecting amounts in excess of minimum wages from its client on the premise that it is obliged to pay minimum wages to its workmen. The finding returned by the Authority in the impugned order is as follows:

> *"The respondent management further fixes service charges and other charges over and above the minimum wages. These facts are proved by way of document filed by the management. This is an agreement between the respondent management and petitioner i.e. M/s. A-On Global Insurance Private Ltd. As per this agreement in April, 2004 per security guard Rs. 6777/- was charged excluding the services charges (8%) relieving charges (1/6th of total amount), paid holiday charges (5 day wages), mobilization charges from the client by the respondent management. As per Govt. notification, the minimum wages during the period for security guard are Rs. 2862.90. The contention of the petitioners is that even this amount was not paid to them, whereas respondent management collected huge amount from the clients. Again in this document, kindly refer in para 18, which has been reproduced below:*
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> *"18) Revision of Contract Rates: Whenever the minimum wages and allowances payable to the Guarding personnel are increased by a notification from the respective State Governments or from any other Govt./Semi Govt. authority, as applicable, the amount equivalent to the increased wages, allowances Agency Cost and Service tax as applicable on*

those rates will have to be borne by the client. A copy of the gazette notification will be made available on request."

It clearly shows that the respondent management is collecting huge amounts from the client by saying that he is paying minimum wages to the workers as stipulated by the Govt. and in fact the respondent management is denying the same to the workers.

That the workers also filed a document-An agreement between the respondent and Asstt. Management Company Ltd. Dated 01.11.2006 in respect of providing security personnel at HDFC, Tolstoy Marg, New Delhi. The Clause 2(i) of the agreement, which is reproduced below:

(i) That the contractor shall be responsible and liable to payment of salaries, wages, (which shall not be less than the minimum wagers prescribed by Govt. from time to time) and other legal dues of the employees employed by it for the purpose of rendering services to the client under the agreement."

It is clearly indicates, that the respondent management is taking more than minimum wages from its clients.

In addition to this, the petitioner workmen filed a brochure dated 30.03.2006 issued by the respondent management introducing itself to the prospective clients, indicating the services provided by them and the charges levied by them. As per this brochure, in Delhi, the management's charges are as follows:

Minimum Wages	*Rs. 2863/-*
Statutory Obligation	*Rs. 1222/-*
1/6th relieving charges	*Rs. 681/-*
7% training cost	*Rs. 334/-*
3% Operational Cost	*Rs. 143/-*
10% Agency Fees	*Rs. 477/-*
Total	*Rs. 5720/-*

This also shows that the respondent management is receiving minimum wages and additional expenses from the clients, but is not paying even the minimum wages to the employees."

14. The judgement relied on by the Petitioner in ***Lingegowd Detective Agency and Security Chamber (P) Ltd & Ors*** (supra) has no bearing on the facts and circumstances of this case, in view of the fact that in Delhi the aforesaid notification dated 13.08.1965 and 28.04.1989 are in force, which make the Act applicable to all Shops & Establishments in Delhi. The situation was materially different in Karnataka.

15. I find no merit in the submissions of the Petitioner that they pay minimum wages to the Respondent as and when they are able to obtain it from their clients. It is their statutory obligation to pay the minimum wages to their employees. The said obligation has no relevance to the charges that the petitioner may be realizing from its clients.

16. In view of the above, the petition is dismissed with costs of Rs20,000/- to be paid to the Delhi High Court Legal Services Committee. The costs be paid within four weeks. A copy of this order be communicated to the Delhi High Court Legal Service Committee for information.

VIPIN SANGHI, J

MAY 03, 2013