

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

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Date of decision: 27th January, 2014

**+ LPA No.407/2013, CM No.1673/2014 (for amendment in appeal)
& CM No.9186/2013 (for stay).**

M/S TOPS SECURITY LTD. Appellant
Through: Mr. K.C. Dubey, Adv.

Versus

**TOPS DETECTIVE AND SECURTY SERVICES LTD.
KARAMCHARI UNION (REGD.) Respondent**
Through: Mr. Prabhakar, Adv.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This intra court appeal impugns the judgment dated 3rd May, 2013 of the learned Single Judge of this Court of dismissal of W.P.(C) No.2771/2013 preferred by the appellant. The said writ petition was preferred by the appellant challenging the order dated 19th January, 2012 of the Authority appointed under the Minimum Wages Act, 1948 allowing the application of the respondent Union under Section 20 of the Act for release of difference of minimum wages and wages paid for the period 1st August, 2005 to 31st January, 2006 and further directing the appellant to pay compensation equivalent to five times the said difference.

2. The counsel for the appellant during the arguments on 2nd December, 2013 confined the challenge to the judgment of the learned Single Judge and resultantly to the order of the Authority, to the quantum of compensation which the appellant has been directed to pay. Notice of the appeal limited to the said aspect was issued to the respondent Union. The counsel for the respondent Union has appeared. We have finally heard the counsels on the appeal.

3. Before coming to the merits of the appeal, it may be mentioned that the appellant has after the order dated 2nd December, 2013 filed CM No.1673/2014 for amendment of the Memorandum of Appeal contending that inadvertently no ground challenging the quantum of compensation which the appellant has been directed to pay has been urged and for formally taking the said ground in the Memorandum of Appeal. We allow the appellant to do so.

4. Notice of the appeal having been issued limited to the aspect of quantum of compensation which the appellant has been directed to pay, need is not felt to discuss the challenge earlier made by the appellant to the applicability of the Act to it and to it being the “employer”.

5. The Authority, in its order dated 19th January, 2012, has not given any reason whatsoever for directing the appellant to pay compensation five times

the difference between the wages paid by the appellant and the minimum wages which were liable to be paid.

6. Section 20(3)(i) of the Act empowers the Authority to, upon finding the employer to have paid less than the minimum rates of wages direct the employer to pay to the employee the amount by which the minimum wages payable to him exceed the amount already paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess. The Act or the Rules are not found to lay down any guidelines or criteria for determining the quantum of such compensation, i.e. whether it has to be *Nil* or ten times.

7. The said question is found to have vexed the Courts from time to time. The Division Bench of the Bombay High Court in *C.S. Parameswaran Vs. The Authority under the Minimum Wages Act, 1948 for Nandgaon* MANU/MH/0193/1968 held, that the Act vests a discretion in the Authority whether to impose penalty or not; 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; each case must depend upon the equities of the case; there may be 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. It was further held that the Authority is not bound to grant compensation.

8. The Division Bench of the Patna High Court also in ***G.S. Dugal & Co. (Private) Ltd. Vs. Labour Inspector (Central)*** AIR 1968 Patna 90 held that although no criteria is indicated for fixing the amount of compensation which has to be directed to be paid along with the amount of the excess wages, the outer limit of the amount of compensation is ten times such excess amount; however 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; it can be to the maximum limit where the Authority is of the view that the employer has deliberately paid less wages than the minimum and has done so in spite of demands by the employees concerned or any officer, authority or body on their behalf. Finding the employer in that case to have been misled by the wrong meaning given by the Labour Welfare Officer to the Notification and further finding the employees to have never made any grievance, the direction for payment of compensation at

ten times was held to be capricious and arbitrary and reduced to an amount equal to the amount of wages paid less to the employees concerned.

9. The question again came up before the Division Bench of the Gujarat High Court in *Chief Officer, Bhavnagar Nagarpalika Vs. Meghjiabhai Ugabhai* MANU/GJ/0173/1992; it was again held that the award of compensation is not compulsory or mandatory and 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. The challenge to the constitutional validity of Section 20(3)(i) on the ground of vesting unguided discretion in the Authority, was negatived.

10. The Supreme Court in *Prerna Sahygo Vs. Authority under Minimum Wages* (2001) 9 SCC 247 set aside the judgment of the High Court of Punjab and Haryana refusing to interfere with payment of compensation of Rs.92,500/- for paying Rs.2,550/- less than the minimum wages and held the award of such compensation to be exorbitant and reduced the compensation to equivalent to the amount of wages.

11. A learned Single Judge of this Court also in ***Kerala Automobiles Ltd. Vs. Mrs. Naveetha P.*** MANU/DE/0699/2008 held that the intention behind Section 20(3)(i) is to compensate the workman and not to penalize the employer and reduced the compensation from that imposed of ten times to twice the amount of difference between the wages paid and the minimum wages.

12. Applying the aforesaid principles in the facts of the present case, we find:-

- (a) the Authority to have held that the Private Security Agencies (Regulation) Act, 2005 had come into force on 15th March, 2006 making the minimum wages applicable to security workers;
- (b) the Authority as well as the learned Single Judge to have held that though the Supreme Court in ***Lingegowd Detective & Security Chamber (P) Limited Vs. Mysore Kirloskar Limited*** (2006) 5 SCC 180 relied upon by the appellant had held minimum wages to be not payable to security personnel but the said judgment pertaining to the State of Karnataka was not applicable to Delhi for the reason of the Government of National Capital Territory of

Delhi having issued a Notification dated 28th April, 1989 in relation to employment in all shops and establishments covered by the Delhi Shops and Establishments Act, 1954, bringing the establishments situated within Delhi under the ambit of the Minimum Wages Act, 1948;

- (c) there being nothing on record to show that the employees of the appellant on any earlier occasion had made any grievance of not being paid minimum wages;
- (d) the period of the default is only from 1st August, 2005 to 31st January, 2006; and,
- (e) that the appellant is engaged in the business of providing security personnel to other establishments.

13. For the aforesaid reasons, we are of the view that the award of compensation at five times the excess wages due is uncalled for and exorbitant. However considering that the period for which the excess wages are due is nearly ten years old, we feel that the employees of the appellant will be sufficiently compensated by direction for payment of compensation at three times the amount of the excess wages due. We have arrived at the said rate of

compensation taking into consideration that only under the best of the money multiplier schemes, is the money doubled every five years.

14. The appeal is thus partly allowed to the aforesaid extent. The order of the Authority directing the appellant to pay compensation/penalty equal to five times the excess wages due is set aside and substituted with a direction to pay the excess wages with three times the compensation. The order so modified be complied within one month hereof. The appellant has till date not deposited the litigation expenses of Rs.15,000/- earlier directed to be paid; the appellant to within the said time also pay the said litigation expenses.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

JANUARY 27, 2014

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