

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.22249 of 2012

M/s.T N K Govindaraju Chetty &
Co. Pvt., Ltd.,
Owner of Devi, Devi Paradise
Devi Bala and Devi Kala Theatres
rep.by K.N.Varadarajan
Executive Director
T.N.K.House, 48 Anna Salai
Chennai-600 002 ... Petitioner

vs.

1.The Presiding Officer
II Additional Labour Court
Chennai

2.B.Genesan

3.S.Kamaal

4.A.L.Balasubramanian

5.M.N.Dev Anand

6.R.P.Karthikeyan

7.Mohammed Jamaludhin

8.M.Ramurthy

9.S.Ramu

10.T.P.Rajendran

11.S.Sivakumar

12.P.Vijayakumar

13.A.Arjunan

14.M.Arumugam

15.E.Babu

16.V.Kannan

17.T.G.Kuppusamy

18.G.Mohan

19.S.Mohan

20.Mohammed Eliyas

21.S.Murali

22.N.Parthasarathy

23.R.Rajagopal

24.V.Ramesh Babu

25.G.Ramesh Rao

26.H.Ravi (Deceased)

27.S.Santhanaraj

28.C.Sundaram

29.C.Susairaj

30.N.Varadhan

31.D.Vijayakumar

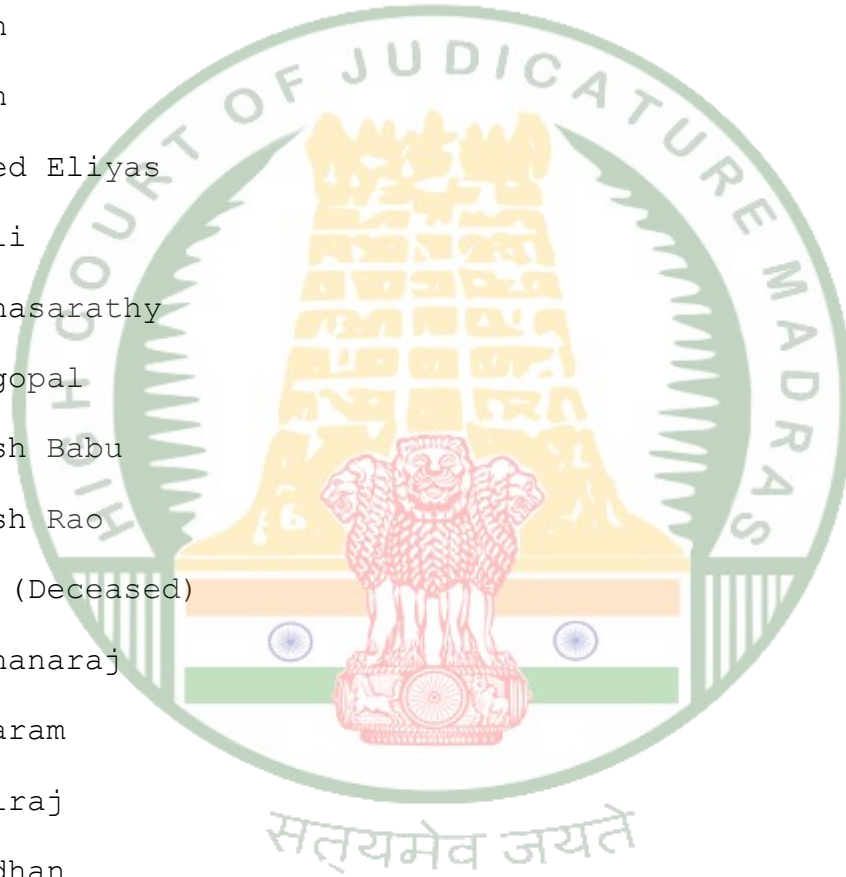
32.V.Parthasarathy

33.S.K.Saravanan

34.P.Dinakaran

35.A.Kripanandan

36.T.Nagarajan



WEB COPY

37.S.Perumal

38.C.Sathish

39.S.Selvaraj

40.K.Srinivasan

41.J.Charles

42.A.Elumalai

43.E.Ganesan

44.V.Jayavel

45.A.Kumaravel

46.S.Masilamani

47.V.Muraligopal

48.K.Neelamohan

49.K.R.Parthibab

50.K.Rajkumar

51.S.V.Ramki

52.V.Sivakumar

53.S.Suresh

54.J.Fathima

55.K.Govindamma

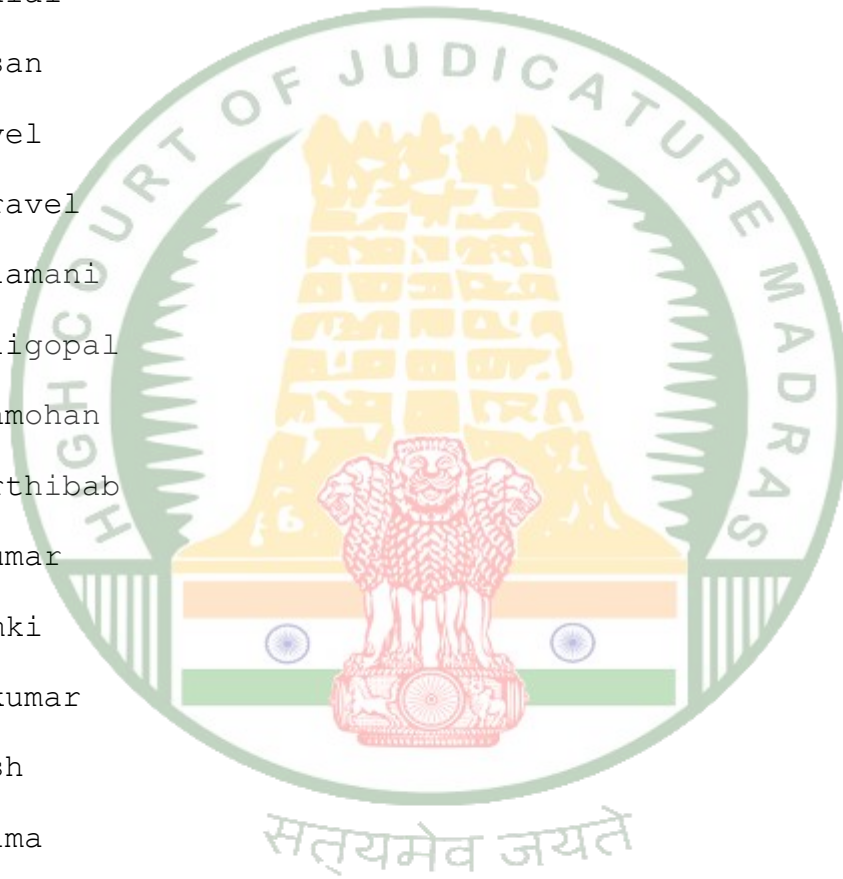
56.K.Govindammal

57.N.Indira

58.M.Maheswari

59.C.Manjula

60.M.Nagammal



WEB COPY

61.S.Kuyini (Deceased)

62.V.Ramalingam

63.P.Saradha

64.R.Sowri

65.A.Velankanni

66.N.Vengadamma

67.S.Victoria

68.V.Karunakaran

C/O.TamilNadu Thiraiyarangu Thozhilalargal Sangam,
Rep. by its general Secretary,
4-A, Ragivgandhi Nagar Main road,
Ragivgandhi Nagar,
Erukancheery,
Chennai-600 118.

69.R.Kalaiselvi

70.R.Surendar

71.H.Damayanthi

72.N.Vasu

73.V.Jayapriya

74.V.Girija

C/o.Tamil Nadu Thiraiyarangu
Thozhilalargal Sangam
rep.by its General Secretary
4-A, Ragivgandhi Nagar Main Road
Rajivgandhi Nagar
Erukancheery, Chennai-600 118

... Respondents

(R23, R39 & R60 are amended as per
Order, dated 15.07.2015, in M.P.
Nos.1, 3 & 5 / 2015 in W.P.No.22249 / 2012)

(R69 to R71 are substituted in the place of
deceased R26 as per order, dated 26.10.2015
in M.P.No.2 / 2015 in W.P.No.22249 / 2012)

(R72 to R74 are substituted in the place of deceased R61 as per Order, dated 26.10.2015 in M.P.No.5 / 2015 in W.P.No.22249 / 2012)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorari to call for the records connected with C.P.No.84 of 2009, on the file of the first respondent / II Additional Labour Court, Chennai, and to quash the order, dated 10.07.2012 made therein.

For Petitioner : Mrs.AL.Gandhimathi

For Respondents: Mr.S.P.Srinivasan
for R2 to R4, R7, R8, R10 to R20, R22 to R25, R27, R29 to R31, R34 to R37, R39, R40, R43 to R51, R53 to R60, R62 to R64, R66 to R68
R1 - Court

O R D E R

Reserved on : 26.10.2015
Pronounced on : 16.12.2015

The prayer in the writ petition is for issuance of a writ of certiorari to quash the impugned order, dated 10.07.2012, in C.P.No.84 of 2009, whereby and whereunder the first respondent has directed the petitioner / Management to pay Rs.48,28,632/- as difference of minimum wages to the respondents 2 to 68.

2. The short facts of the case are as follows:
The respondents 2 to 68 herein had filed a claim petition, in C.P.No.84 of 2009, before the first respondent, against the writ petitioner / Management herein, claiming difference in minimum wages amounting to Rs.48,28,362/- due to them from 01.04.1996 to 31.03.2009.

3. According to the respondents 2 to 68, they have joined the service of the petitioner / Management, who has been running cinema theatres, on various dates and they have been working as permanent workmen. They have been members of Tamil Nadu Thiraiyarangu Thozhilalargal Sangam. The petitioner / Management comes under the Tamil Nadu Shops and Establishments Act, 1947 and the respondents 2 to 68 also come under the Minimum Wages Act, 1948. Whenever the Government issues notification with regard to minimum wages pertaining to cinema industry, they are also entitled to the same.

4. Further, they had submitted that during 1996, 2000 and 2004, there were revision of minimum wages for employees in cinema industry. It was very unfortunate that even though there were several notifications pertaining to revision of minimum wages, they were not paid the revised minimum wages as per the minimum wages notification. Since they were unable to get the details with regard to minimum wages prior to 1996, in the said claim petition, they had claimed difference in minimum wages due to them from 01.04.1996 to 31.03.2009. Since there would be revision due to cost of living index in the wages from 01.04.2009, they had reserved their right to file separate claim petition for the period prior to 1996 and the subsequent period from 01.04.2009. The Minimum Wages Act, which is not a complete code, has excluded the jurisdiction of Labour Court under Section 22C(2) of the Industrial Disputes Act, 1947. In the minimum wages notification, it had been clearly stated that daily wages should be arrived at by dividing the monthly salary by 26 working days. But, in their case, the petitioner / Management had divided the monthly salary by 30 working days and hence they filed the claim petition seeking the relief as stated above.

5. The petitioner / Management had filed a counter statement and resisted the claim of the respondents 2 to 68 stating that the respondents 2 to 68 have been paid monthly salary from the date of their appointment as per the long term wage settlements entered into with the Union during 1995, 2000 and 2005. Prior to 1994, they had fixed the salary to the employees as per the Minimum Wages Act and also based on the performance of the employees. They had negotiated with Union and arrived at 18(1) settlement during 1995, 2000 and 2005 and in all the settlements, the Management had paid the wages to the workers as per the settlements, where the wages paid to the workers were not below the minimum wages prescribed at any point of time with due compliance and hence the claim petition was not maintainable and there was no difference in wages.

6. Further, the petitioner / Management had submitted that there was no violation of minimum wages notification and the claim of the respondents 2 to 68 was purely based on a wrong methodology. Despite obtaining the details pertaining to minimum wages and dearness allowance under the Right to Information Act, they had made the claim unwantedly. Accordingly, the Management had not reduced the minimum wages prescribed under the Act, instead the respondents 2 to 68 had been paid higher amount as wages at all times. Hence, the question of contracting out did not arise.

7. The petitioner / Management had further submitted that they had adopted all the notifications in respect of minimum wages. The notified monthly wage for cinema theatre employees, under the Minimum Wages Act by the State Government, should be divided by 26 to arrive at daily wage for the daily rated workmen. Since their employees were monthly rated workmen and they were paid wages on monthly basis as per the wage settlement, which was not less than in the notification per month irrespective of the number of days in a calendar month, ie. 28, 29, 30 or 31 days, the question of converting it into daily rated did not arise. Hence, they had prayed for dismissal of the claim petition.

8. The first respondent had framed the following two issues for consideration:

- i. Whether the respondents 2 to 68 were entitled to compute the monetary benefits as per the annexure of the petition claiming the difference of wages from 01.04.1996 to 31.03.2009?
- ii. Whether the respondents 2 to 68 were entitled to what relief?

9. On the side of the respondents 2 to 68, two witnesses were examined as P.Ws.1 and 2 and eight documents were marked as Exs.P1 to P8 and on the side of the petitioner / Management, one witness was examined as R.W.1 and four documents were marked as Exs.R1 to R4.

10. The first respondent, upon perusing the material papers on record and upon hearing the argument of both sides, by the impugned order, dated 10.07.2012, had allowed the claim petition and directed the petitioner / Management to pay Rs.48,28,632/- as difference of minimum wages to the respondents 2 to 68 herein. Challenging the said order, the Management has filed this writ petition.

11. The highly competent counsel appearing for the petitioner has submitted that the petitioner / Management has paid wages to its employees on monthly rated basis and also in compliance with the Minimum Wages Act from the date of inception of the said Act. The Union of the workforce, through bilateral negotiations, has entered into various wage settlements under Section 18(1) of the Industrial Disputes Act. The settlements effected between 1995 and 2010, signed by both parties, are still in operation. At all times, the wages agreed to be paid in each settlement were always higher than the minimum wages notified by the Government and the employees have been paid accordingly. In order to prove the same, Exs.R1 and R2, namely,

statement of salary and salary register respectively, have been marked. But, the first respondent has not considered the crucial documents, which clearly proved that the Management has paid excess salary to its employees when comparing to the wages prescribed under the Minimum Wages Act.

12. Further, the highly competent counsel has submitted that all the employees of the petitioner / Management are working on monthly rated basis and not on daily rated basis. The competent authorities attached to the Labour Department inspected the statutory records including the wages register maintained by the petitioner / Management. The authorities of the Labour Department are well aware that the employees were paid more when comparing the wages prescribed under the Minimum Wages Act. The learned counsel has furnished the below mentioned particulars regarding the salary of the employees.

Wage Period	Minimum rates of wages per month as per G.O. (Basic)	D.A. per month	Minimum monthly wages payable as per Act	Actual monthly wages paid as per wages register	Excess paid per month above the notified minimum wages
M.N.Dev Anand – Project Operator					
Apr 01 to Mar 02	1,794.00	1,150.00	2,944.00	3,825.00	881.00
Apr 02 to Mar 03	1,794.00	1,214.00	3,008.00	3,939.00	931.00
Apr 03 to Mar 04	1,794.00	1,352.00	3,146.00	4,137.00	991.00
Sep 04 to Mar 05	3,386.00	354.00	3,740.00	4,801.00	1,061.00
Apr 05 to Mar 06	3,386.00	452.00	3,838.00	4,899.00	1,061.00
Apr 06 to Mar 07	3,386.00	549.00	3,935.00	5,056.00	1,121.00
Apr 07 to Mar 08	3,386.00	653.00	4,039.00	5,200.00	1,161.00
Apr 08 to Mar 09	3,386.00	854.00	4,240.00	5,441.00	1,201.00
R.P.Karthikeyan – Project Operator					
Apr 01 to Mar 02	1,794.00	1,150.00	2,944.00	3,745.00	801.00

Apr 02 to Mar 03	1,794.00	1,214.00	3,008.00	3,859.00	851.00
Apr 03 to Mar 04	1,794.00	1,352.00	3,146.00	4,057.00	911.00
Sep 04 to Mar 05	3,386.00	354.00	3,740.00	4,721.00	981.00
Apr 05 to Mar 06	3,386.00	452.00	3,838.00	4,819.00	981.00
Apr 06 to Mar 07	3,386.00	549.00	3,935.00	4,976.00	1,041.00
Apr 07 to Mar 08	3,386.00	653.00	4,039.00	5,120.00	1,081.00
Apr 08 to Mar 09	3,386.00	854.00	4,240.00	5,361.00	1,121.00
P.Vijayakumar - TC/BC/GK/G					
Apr 01 to Mar 02	1,507.00	1,150.00	2,657.00	3,610.00	953.00
Apr 02 to Mar 03	1,507.00	1,214.00	2,721.00	3,714.00	993.00
Apr 03 to Mar 04	1,507.00	1,352.00	2,859.00	3,902.00	1,043.00
Sep 04 to Mar 05	3,056.00	354.00	3,410.00	4,513.00	1,103.00
Apr 05 to Mar 06	3,056.00	452.00	3,508.00	4,611.00	1,103.00
Apr 06 to Mar 07	3,056.00	549.00	3,605.00	4,748.00	1,143.00
Apr 07 to Mar 08	3,056.00	653.00	3,709.00	4,877.00	1,168.00
Apr 08 to Mar 09	3,056.00	854.00	3,910.00	5,103.00	1,193.00
V.Parthasarathy - Electrician					
Apr 01 to Mar 02	1,794.00	1,150.00	2,944.00	3,274.00	330.00
Apr 02 to Mar 03	1,794.00	1,214.00	3,008.00	3,388.00	380.00
Apr 03 to Mar 04	1,794.00	1,352.00	3,146.00	3,586.00	440.00
Sep 04 to Mar 05	3,386.00	354.00	3,740.00	4,250.00	510.00

Apr 05 to Mar 06	3,386.00	452.00	3,838.00	4,348.00	500.00
Apr 06 to Mar 07	3,386.00	549.00	3,935.00	4,505.00	570.00
Apr 07 to Mar 08	3,386.00	653.00	4,039.00	4,649.00	610.00
Apr 08 to Mar 09	3,386.00	854.00	4,240.00	4,890.00	650.00
E.Ganesan - Helper					
Apr 01 to Mar 02	1,449.00	1,150.00	2,599.00	2,780.00	181.00
Apr 02 to Mar 03	1,449.00	1,214.00	2,663.00	2,874.00	211.00
Apr 03 to Mar 04	1,449.00	1,352.00	2,801.00	3,052.00	251.00
Sep 04 to Mar 05	2,989.00	354.00	3,343.00	3,644.00	301.00
Apr 05 to Mar 06	2,989.00	452.00	3,441.00	3,742.00	301.00
Apr 06 to Mar 07	2,989.00	549.00	3,538.00	3,869.00	331.00
Apr 07 to Mar 08	2,989.00	653.00	3,642.00	3,993.00	351.00
Apr 08 to Mar 09	2,989.00	854.00	3,843.00	4,214.00	371.00
R.Sowri - Sweeper					
Apr 01 to Mar 02	1,449.00	1,150.00	2,599.00	3,270.00	671.00
Apr 02 to Mar 03	1,449.00	1,214.00	2,663.00	3,364.00	701.00
Apr 03 to Mar 04	1,449.00	1,352.00	2,801.00	3,542.00	741.00
Sep 04 to Mar 05	2,989.00	354.00	3,343.00	4,134.00	791.00
Apr 05 to Mar 06	2,989.00	452.00	3,441.00	4,232.00	791.00
Apr 06 to Mar 07	2,989.00	549.00	3,538.00	4,359.00	821.00
Apr 07 to Mar 08	2,989.00	653.00	3,642.00	4,483.00	841.00

Apr 08 to Mar 09	2,989.00	854.00	3,843.00	4,704.00	861.00
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13. The highly competent counsel has further submitted that the respondents 2 to 68 had filed the claim petition based on wrong methodology and misinterpretation of minimum wages notification of the Government. The petitioner / Management has paid wages to its employees on monthly rated basis and not on daily rated basis and hence the question of converting the monthly wages into daily wages does not arise. Therefore, the highly competent counsel has prayed this Court to set aside the impugned order passed by the first respondent.

14. The highly competent counsel appearing for the employees has submitted that the minimum wages notification clearly states that daily salary should be arrived at by dividing the monthly salary by 26 working days, but the petitioner / Management has divided the monthly salary by 30 working days and as such the Management has violated the minimum wages notification. Since the employees had not been paid the prescribed minimum wages, they had levelled the claim petition against the Management. Further, when the monthly rated employee goes on leave, the Management is calculating one day's wage by dividing the monthly salary by 26 working days and not by 30 working days. This method has also been adopted for festival holidays also. Further, as per the decision of the Hon'ble Supreme Court, employees are entitled to receive salary for Sundays as well as weekly off days. There was a revision of minimum wages for employment in cinema industry during 1996, 2000 and 2004, but the Management has not paid the revised minimum wages as per the notification.

15. Further, the highly competent counsel has submitted that the Union of the workforce had collected information under the Right to Information Act, accordingly the employees are entitled to dearness allowance from 01.04.1996 based on the orders issued by the Government relating to revision of minimum wages. Further, the first respondent has passed the impugned order, after well considering the averments of both parties and perusing the Judgments of the Hon'ble Supreme Court as well as the Government Orders for revision of minimum wages in Cinema Industry. Therefore, the impugned order is suitable for execution.

16. From the above discussion, this Court is of the view that:

(i) The petitioner / Management had furnished monthly wages payment statement of the respondents 5, 6, 22, 43 and 64 for the

period from April 2001 to March 2009. It is seen from the said statement that the Management has paid higher salary comparing with the minimum wages. The prayer of the employees was to compute the money value of the benefits and their claim for difference in minimum wages due to them from 01.04.1996 to 31.03.2009. The said relief sought for by the employees is contrary to the payment statement of the Management.

(ii) As per the counter affidavit of the Management, the workforce is receiving monthly wages as per long term wage settlement entered into with the Union during 1995, 2000 and 2005 and the negotiation arrived at between the parties as per Section 18(1) of the Industrial Disputes Act. Therefore, the claim petition, which had been levied by the employees, amounts to breach of wage settlement.

17. On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side, and on perusing the typed set of papers and the views of this Court (i) and (ii) as stated above, this Court holds that there is sufficient force in the civil miscellaneous appal to allow it.

18. In the result, the writ petition is allowed and the order, dated 10.07.2012, passed in C.P.No.84 of 2009, by the first respondent is set aside. No costs.
16.12.2015

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To:

The Presiding Officer,
II Additional Labour Court,
Chennai.

+1cc to M/S. AL.Gandhimathi, Advocate, S.R.No.67877
+1cc to Mr.S.P.Sriniwasan, Advocate, S.R.No.67570

W.P.No.22249 of 2012

mp (CO)
srg (08/01/2016)