

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

Date of Decision: 4th December, 2015

+ **W.P.(C) 351/2015**

SHRI RAJIV K. KATARIA

... Petitioner

Through: Mr. Anil Sehgal, Advocate

versus

SH. AJAY

.... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Challenge in this writ petition under Article 226 and 227 of the Constitution of India is to the ex-parte order dated 23.04.2014 passed by the authority under Minimum Wages Act, 1948 in a petition bearing No.MW/SD/564/2013/7677 filed by the respondent-workman whereby the petitioner was directed to pay a sum of Rs.22,812/- towards arrear of minimum wages alongwith compensation to the tune of 10 times amounting to Rs.2,28,120/-.

2. The respondent had filed a claim under Section 20 of the Minimum Wages Act before the designated authority under the Minimum Wages Act alleging that he was working with the petitioner on the post of Mechanic since 01.04.2004 at last drawn wages of Rs.6000/- per month and was paid less than the minimum wages of Rs.9,802/- for the period 01.01.2013 to 30.11.2013 and claimed Rs.41,822/- towards arrear. The respondent (petitioner herein) was proceeded ex-parte. The petitioner (respondent herein) filed affidavit alongwith salary sheets for the month of November, 2012 and December, 2013. Thereupon the designated authority passed the impugned order which is subject matter of challenge in this writ petition.

3. Notice of the petition was sent to the respondent. As per the report, respondent was served personally by the petitioner during the execution proceedings. Despite this, he failed to appear.

4. Counsel for the petitioner has been heard. Trial court record has been requisitioned.

5. Learned counsel for the petitioner assails the impugned order primarily on two grounds:

(i) The respondent was being paid as per the Minimum Wages Act even for the period in question. Even if the petitioner was proceeded ex-parte in those proceedings, it was incumbent upon the authority concerned to have appreciated and examine the record. The respondent himself had placed on record the salary slips for the month of November, 2012 and December, 2013 which reflected that he was paid salary in accordance with minimum wages. However, without considering the documents, the impugned order was passed.

(ii) The authority concerned failed to pass a speaking and reasoned order while granting maximum compensation alongwith arrears of minimum wages. Reference was made to the order passed by the same authority in the matter of ***Sh.Laxman Singh S/o Late Kunwer Singh vs. M/s Adarsh Yamaha in Claim No. MW/SD/171/2013/16471*** whereby the same competent authority has awarded one time of the arrear of minimum wages towards compensation. The counsel further urged that absolutely no reason was given by the competent authority for awarding the maximum compensation to the workman in this case. Reliance was placed on ***Prerna Sahygo vs. Authority under Minimum Wages and Ors.***, (2001) 9 SCC 247 and ***Kerala Automobiles Ltd. (M/s.) vs. Mrs. Naveetha P.***, 2008 LLR 677.

6. The first question for consideration is whether the respondent-workman was paid less than the minimum rates of wages. As per the claim filed by the respondent, he was working with the petitioner-management as Mechanic since 01.04.2004 at last drawn wages of Rs.6000/- per month. According to him, he was paid wages less than the minimum rate of wages fixed by Govt. of NCT of Delhi for his category. He filed the details of the claim as below:

S.No.	Period	Minimum Wages (In Rs.)	Wages received	Arrear
1.	2.	3.	4.	5.
1.	01/01/2013 To 30/11/2013	Rs.9802/- per month	Rs.6000/- per month	Rs.3802x11=41,822/-
				Total amounting to Rs. 41,822/-

7. Competent authority opined that although the claim was laid for the period 01.01.2013 to 30.11.2013 but the claimant was entitled to the relief only for last six months from the date of filing his claim. As such, the claim of the workman was to be considered for the period 01.06.2013 to 30.11.2013. According to the claimant, the minimum wages for the relevant period was Rs.9,802/- for his category of workman. However, counsel for the petitioner has placed on record the copy of the Minimum Wages Rates Ready Reckoner for the period 1980 to 2014 and according to this ready Reckoner, the minimum wages from 01.04.2013 to 30.09.2013 was Rs.9,386/- and from 01.10.2013 till 31.03.2014 it was Rs.9,802/-. The workman claimed that he was being paid as per last drawn wages of Rs.6000/- per month which was less than the minimum wages, however, he himself had placed on record before the competent authority, the salary slip for the month of November, 2012 Ex.WW1/2 and December, 2013 Ex.WW1/3 which reflects that at no point of time he was paid wages of Rs.6000/-. Rather the salary slip for the month of November, 2012 reflect that the minimum wages payable was @ Rs.8,814/-. After deduction, the workman was paid Rs.4,465/-. Salary slip for the month of December, 2013 reflects that the minimum wages was Rs.9,802/- and after deduction he was paid Rs.2,540/-. The petitioner herein has placed on record the salary slips for the relevant period June 2013 to December, 2013 which reflects that the workman was paid as per the minimum wages of Rs.9,386/- for the month of June, July, August, September,

October, November and as per minimum wage of Rs.9,802/- for the month of December, 2013.

8. There is no provision which obliges the authority concerned to treat the claim as correct and proved and claimant entitled for relief sought in case respondent did not appear and contest the claim. Even if the claim is not contested by respondent, the petitioner has to prove his case and has to stand on its own legs. Under Order VIII Rule 10 of the Code of Civil Procedure, if any party from whom a written statement is required fails to present the same within the time fixed by the Court, the court may pronounce judgment against him or make such order in relation to the suit as it thinks fit. A discretion is left to the Court. Observations made by Hon'ble Supreme Court in **Balraj Taneja and Anr vs. Sunil Madan & Anr.**, (1999) 8SCC 396 in this regard may be reproduced with advantage:

“30. As pointed out earlier, the Court has not to act blindly upon the admission of a fact made by the defendant in his Written Statement nor the Court should proceed to pass judgment blindly merely because a Written Statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the Court. In a case, specially where a Written Statement has not been filed by the defendant, the Court should be a little cautious in proceeding under Order 8 Rule 10 CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of Court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the Court can conveniently pass a judgment against the defendant who has not filed the Written Statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the Court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression "the Court may, in its discretion, require any such fact to be proved" used in Sub-rule (2) of Rule 5 of Order 8, or the expression "may make such order in relation to the suit as it thinks fit" used in Rule 10 of Order 8.

9. This view was reiterated in **C.N. Ramappa Gowda v. C.C. Chandregowda (D) by L.Rs. and another**, AIR 2012 SC 2528, wherein also it has been held that Court is duty bound to adjudicate even in the absence of complete pleadings or in absence of pleadings of only one party. In para 14 of the judgment, the Court said that effect of non-filing of written statement and proceeding to try the suit is clearly to expedite disposal of the suit.

It is not penal in nature wherein the defendant has to be penalised for non filing of written statement by trying the suit in a mechanical manner by passing a decree. Apex Court reiterated its earlier observations in following words:

....We wish to reiterate that in a case where written statement has not been filed, the Court should be a little more cautious in proceeding under Order 8 Rule 10 Code of Civil Procedure and before passing a judgment, it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment and decree could not possibly be passed without requiring him to prove the fact pleaded in the plaint. It is only when the Court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the Plaintiff in view of the deemed admission by the Defendant, the Court can conveniently pass a judgment and decree against the Defendant who has not filed the written statement. But, if the plaint itself indicates that there are disputed questions of fact involved in the case arising from the plaint itself giving rise to two versions, it would not be safe for the Court to record an ex parte judgment without directing the Plaintiff to prove the facts so as to settle the factual controversy. In that event, the ex parte judgment although may appear to have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the delay in finally disposing of the suit giving rise to multiplicity of proceeding which hardly promotes the cause of speedy trial. However, if the Court is clearly of the view that the Plaintiff's case even without any evidence is prima facie unimpeachable and the Defendant's approach is clearly a dilatory tactic to delay the passing of a decree, it would be justified in appropriate cases to pass even an uncontested decree. What would be the nature of such a case ultimately will have to be left to the wisdom and just exercise of discretion by the trial Court who is seized of the trial of the suit.

10. Applying the ratio of these cases in the present case, even if the respondent-management was proceeded ex-parte, it was incumbent upon the authority concerned to have considered the material available on record and not to go simply by the claim made in the petition reiterated in the affidavit which according to the counsel for the petitioner was not even tendered in evidence. Although the workman himself had placed on record the salary slip for the month of November, 2012 and December, 2013 and exhibited the same as Ex.WW1/2 and Ex.WW1/3 yet the same were probably not gone into by the competent authority which resulted in passing the impugned order holding that the workman was entitled to a sum of Rs.22,812/- as arrears of the minimum wages. Although the workman claimed that he was paid wages @Rs.6000/- per month but this

claim is not fortified by the salary slips filed by him. Rather the same reflects that he was paid as per minimum wages. That being so, he was not entitled to any wages.

11. Things did not end here. After having held the respondent entitled to receive Rs.22,812/- as arrears of the minimum wages without assigning any reason, the maximum compensation to the tune of 10 times of the arrears of minimum wages were awarded to the workman. The question that falls for consideration is whether the Minimum Wages Authority was justified in directing payment of outer limit amount of compensation i.e., 10 times of the difference in wages. Under Section 20(3) of MW Act, outer limit is ten times difference in wages payable. Clauses (i) and (ii) of Section 20(3) of the Act read as follows:

(i) In the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed actually paid together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess.

(ii) In any other case the payment of the amount due to the employee with the payment of such compensation as the authority may think fit, not exceeding ten rupees, and the Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of application.

12. In ***Prerna Sahygo*** (supra) the Authority had found ulterior motives in the employer's conduct and directed it to pay 8 times the wages awarded as compensation to the workmen. Although the High Court had dismissed the writ petition, in a petition seeking special leave to appeal, the Supreme Court considered it a fit case for interference. It was of the view that the award of compensation in that case was exorbitant; and that in the circumstances, it should be equivalent to the amount of the balance, unpaid wages awarded by the Authority. It was, therefore, ordered that each of the workers shall get as compensation, an amount equal to the balance, unpaid wages awarded to him, and the impugned order of the Authority in that case was modified to that extent.

13. In ***Kerala Automobiles Ltd.*** (supra) also the respondent was granted balance amount of minimum wages and penalty at the rate of ten times the amount being the maximum compensation as prescribed under the Minimum Wages Act on the ground that

petitioner is a public sector undertaking. Learned Single Judge of this Court observed that while there is no gainsaying the fact that section 20(3)(i) permits the authority to direct compensation of such amount as it deems fit, not exceeding 10 times the amount by which the minimum wages payable to the workman exceed the amount actually paid, it is obvious that a wide discretion has been left with the authority for quantifying any such amount. Although the Minimum Wages Act does not specify how the discretion is to be exercised, such discretion is not unlimited. According to Black's Law Dictionary, the term, "discretion" or to put it more aptly, "judicial and legal discretion", is applied to the discretionary action of a Judge or court, and mean discretion bounded by rules and principles of law, and not arbitrary, capricious or unrestrained action. It is not the indulgence of judicial whim, but the exercise of judicial judgment, based on facts and guided by law, or the equitable decision of what is just proper under the circumstances. It is a legal discretion to be exercised in discerning the course prescribed by law and is not to give effect to the will of the judge, but to that of the law. Reliance was placed on a judgment rendered by a Division Bench of Gujarat High Court in *Chief Officer, Bhavnagar Nagarpalika vs. Meghjiibhai Ugadbhai and Others.* (1995) III LLJ 527 Guj. wherein it was held as follows:-

"Once it is found that the nature of powers to be exercised under section 20 of the Act is judicial, there is no escape from the conclusion that the discretion conferred upon the Authority invested with such judicial powers is not unbridled or unguided. By the very nature of its powers, such Authority is required carefully to look into the matter and to decide it in accordance with sound judicious principles. Even if such Authority has to exercise discretionary powers, the very nature of powers carries with them implicit guidelines to exercise such discretion in a judicial and judicious manner. Conferment of discretionary powers on the authorities performing judicial functions can never be considered arbitrary."

And that:-

".....a judicial decision is usually supported by reasons. Recording of reasons in support of a finding or conclusion is ordinarily a part of judicial process. What weighed with the authority invested with judicial powers in deciding a case or in giving direction or directions is normally found reflected in its reasoned order what is popularly known in the legal parlance, speaking order. The requirement of recording reasons in support of its decision or direction based on exercise of discretionary powers is in itself a guideline for exercise of such discretionary powers. It rules out conferment of unbridled and unguided arbitrary powers on the authority.....Furthermore, the award of compensation under section 20(3) of the Act is not compulsory or mandatory. Such award 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. All these factors are bound to weigh with the Authority in its decision to award compensation, if any, and its quantum to the concerned workman with respect to the application under section 20 of the Act."

14. Similarly, on the same issue, a Division Bench of Bombay High Court in *C.S. Parameswaram v. The Authority under the Minimum Wages Act, 1948 for Nandgaon and Manmad*, (1969) 71 Bom LR 292 held that:-

"Section 20(3)(i) of the Act enables the Authority in the case of payment of wages less than the minimum rates of wages to direct compensation to be paid as the Authority may think fit not exceeding ten times the amount of such excess, and in any other case, a sum not exceeding ten rupees. A reading of this clause shows that there is a discretion in the Authority to award the compensation or not and if it decides to award compensation it is within its discretion to decide what amount it should award. 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. It must be realised that it is not bound to grant compensation. Each case must depend upon the equities of the case. The purpose of making this provision was to see that an employer did not contumaciously refuse to implement the provisions of the Act. There may be, however, 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."

15. In *Priya Darsan Agarbatti v. State of M.P. and Others* (1995) II LLJ 1084 MP a Division Bench of Madhya Pradesh High Court also held that the discretion under section 20(3)(i) of the Minimum Wages Act has to be exercised on consideration of the entirety of the facts and circumstances. Even as early as 1960's a Division Bench of Patna High Court in *G.S.Dugal and Company v. Labour Inspector*, IR 1968 Pat 90 had held that:-

"Although no criteria are indicated in Clause (i) of Sub-section (3) of section 20 of the Act for fixing the amount of compensation which has to be directed to be paid along with the amount of the excess wages within the meaning of the said clause, i.e., the excess amount by which the minimum wages payable to the employees concerned exceeds the amount actually paid, the outer limit of the amount of compensation is ten times such excess amount. That can never mean that without any thyme 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."

16. The High Court of Gujarat in ***Project Technologist Pvt. Ltd. v. P.C. Bhargava and Others***, (1998) 1 GLR 700 relying on an earlier decision of Andhra Pradesh High Court in ***Andhra Pradesh State Handloom Weavers Society v. Authority under Minimum Wages Act, Warangal***, 1986 ILLJ 355 held that:

“.....It cannot be denied that section 20(3) of the Act vests a discretion in the authority to direct payment of compensation, and in deserving cases, it can be equal to ten times of the wages. The exercise of the discretion is not left to the caprice of the Authority. It must be exercised judicially and reasonably. If the facts of a given case show that the authority did not exercise the discretion judiciously, this Court is entitled to interfere with the exercise of discretion.....”

17. Relying upon the aforesaid decisions and of the Supreme Court in ***Prerna Sahygo***(supra) which constitutes a good guide to the amount of compensation payable. The respondent was awarded compensation, an amount equal to the amount of wages awarded to her.

18. The ratio of all the aforesaid authorities applies with full force to the facts of the case in hand. In the instant case absolutely no reason has been given by the authority concerned for awarding the maximum compensation to the workman whereas the same authority in the case of ***Laxman Singh*** (supra) had awarded compensation to the tune of one time of arrears of minimum wages.

19. It is uncontroverted that the proceedings before the Competent Authority are quasi judicial proceedings. It is now well settled law that where an authority makes an order in exercise of a quasi-judicial function it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. It is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi judicial functioning will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of a quasi- judicial order is, *audi alteram partem*, a basic principle of natural justice which must inform every quasi judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. The very requirement of giving reasons is to prevent unfairness or arbitrariness in reaching conclusion. It is the basis of

jurisprudential doctrine that justice should not only be done, it should also appear to be done as well.

20. In **Hindustan Times Ltd. v. Union of India**, (1998) 2 SCC 242, Apex Court stated that the absence of reasons in an order would burden the appellate court with the responsibility of going through the evidence or law for the first time. The Court observed:

“In our view, the satisfaction which a reasoned judgment gives to the losing party or his lawyer is the test of a good judgment. Disposal of cases is no doubt important but quality of the judgment is equally, if not more, important. There is no point in shifting the burden to the higher Court either to support the judgment by reasons or to consider the evidence or law for the first time to see if the judgment needs a reversal...”

21. Similarly, in **State of Rajasthan v. Sohan Lal and Ors.**, (2004) 5 SCC 573, the Court emphasised the need for reasons thus:

The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind...”

22. In **Director, Horticulture Punjab and Ors. v. Jagjivan Parshand**, (2008) 5 SCC 539, it was stated that the spelling out of reasons in an order is a requirement of natural justice:

“Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The “inscrutable face of the sphinx” is ordinarily incongruous with a judicial or quasi-judicial performance”.

23. In **Kranti Associates Private Limited and another v. Masood Ahmed Khan & Ors.**, (2010) 9 SCC 496, the Hon’ble Supreme Court considered various earlier decisions regarding the necessity of giving reasons by the body or authority in support of its decisions and summarized the principles for recording reasons as follows:

“a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice. i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency. k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only

makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

24. In view of the aforesaid, it was incumbent upon the authority concerned to assign appropriate reasons for awarding maximum compensation which, however, was not even warranted in view of the foregoing that the claim of the respondent itself was not maintainable.
25. In the result, the petition is allowed. The impugned order being unsustainable is accordingly set aside. No order, however, as to costs.
26. Trial court record be sent back.

(SUNITA GUPTA)
JUDGE

DECEMBER 04, 2015
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