

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3761/2015 & C.M.No.6711/2015**

Judgment reserved on: 20.04.2015

Judgment pronounced on: 23.04.2015

C.D.M.O., INTEGRATED HEALTH SOCIETY (NORTH WEST)

..... Petitioner

Through: Mr.D.P. Kaushik, Advocate.

versus

VIKAS AND ORS.

..... Respondents

Through: None.

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. The present writ petition has been filed by the petitioner under Article 226 of the Constitution of India whereby he has challenged the order dated 04.09.2014 of the Authority under the Minimum Wages Act, 1948 (hereinafter referred to as 'the Act') under Section 20 (2) of the Act whereby the petitioner was directed to deposit the arrears of wages in the court by way of pay order in favour of each claimant proportionally and individually and the total sum ordered to be paid was Rs.14,29,200/-.

2. The scope of jurisdiction of the court under Article 226 of the Constitution of India has been considered by the Supreme Court in its

pronouncement in Syed Yakoob v. K.S. Radhakrishnan and Ors. AIR 1964

SC 47, in the case the Supreme Court has delineated the scope of writ of certiorari in the following words:

“The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction, a writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and

material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised vide Hari Vishnu Kamath v. Syed Ahmad Ishaque: 1955 (1) SCR 1104; Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam: 1958 SCR 1240 and Kaushalya Devi v. Bachittar Singh: AIR 1960 SC 1168.

It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, of is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of

certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory" provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may, not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."

3. This court, therefore, has to examine the present case keeping in mind the law laid down by the Supreme Court in Syed Yakoob's case (supra).

4. The admitted fact is that the petitioner had employed Nursing Orderlies through the contractor (respondent no.2) in his various health

centres.

5. Several applications under Section 20 (2) of the Act were filed by the workers claiming the amount paid less than the minimum wages applicable to them for the period 1.8.2012 to 30.09.2012 and 1.10.2012 to 31.01.2013.

6. Notices of the applications were issued to the petitioner and the contractor. Neither the petitioner nor contractor contested the proceedings before the Authority under the Act. The case was fixed for hearing on 10.04.2013, 22.05.2013 and 24.07.2013. On 10.04.2013, the authorised representative of the petitioner took the copy of the claim but did not file any reply and finally petitioner was proceeded ex-parte on 24.07.2013. The contractor was also proceeded ex-parte on 14.08.2013. Hence, it is clear that the petitioner as well as the contractor chose not to contest the matter before the Authority under the Act. The court thereafter had proceeded to record the evidences of applicant workers by way of affidavit and on the basis of evidences produced by the workers, the impugned order was passed.

7. The said impugned order has been challenged by the petitioner on following grounds.

A. The petitions had not been filed in accordance with the Minimum Wages Rules.

B. The facts set up did not add up to form a

cause of action against the Petitioner.

C. Taking of any evidence of any kind thereafter was and even today is impermissible.

D. In the given circumstances the Respondent no.2 alone could be held liable.

8. The first and foremost argument of the learned counsel for the petitioner is that the claims had not been filed in accordance with the proforma prescribed under Minimum Wages (Central) Rules, 1950 (hereinafter referred to as the 'the Rules').

9. I have given careful consideration to the argument of learned counsel. From the scheme of Section 20 (2) of the Act and relevant rules, it is apparent that there is no mandatory proforma provided. Form VI which is part of the Rules provides a format of application under Section 20 (2) of the Act but nowhere, either in the Rules or Section 20 of the Act, it is made mandatory that only the applications filed as per proforma were maintainable. Even otherwise, the learned counsel for the petitioner has failed to point out that any information which was required to be furnished as per Form VI of the Rules, had not been furnished by the applicants in their applications before the concerned authority. Rather the applications elaborately disclose all the relevant facts besides the facts required to be

furnished as per Form VI of the Rules. It has been argued before this court that since the application was not as per proforma, the same ought to have been dismissed by the authority and that the petitioner was under the impression that authority would ask the workers to amend the applications and that is why it had not contested the petition before the concerned authority. It is further argued that the authority ought to have asked the workmen to file the amended applications in conformity with the prescribed format. It is further argued that the amendment of the applications would have compelled the representative of the petitioner to contest the applications and non-amendment had led to abandonment of the contest by the petitioner's representative. This argument of the learned counsel for the petitioner holds no water. There is nothing in the Act and the Rules that an application under Section 20 (2) of the Act which is not as per Form VI ought to have been rejected or the authority was duty bound to ask the applicants to amend the same on its own motion.

10. Thus, it cannot be said that the Authority had acted in violation of the procedure or the rules under the Minimum Wages Act. The Supreme Court in para 5 in *Sadhu Ram vs. Delhi Transport Corporation*, AIR 1984 SC 1967 has observed as under:

“..... nor we think that it was right for the High Court to interfere with the Award of the Labour Court under Article 226 on a mere technicality. Article 226 is a device to secure and advance justice and not otherwise. In the result, we allow the appeal, set aside the judgment of the High Court and restore the Award of the Presiding Officer.”

11. Thus, the order of the Authority under the Act cannot be set aside on the ground that the applications were not strictly as per Form VI of the Rules. If the petitioner was aggrieved nothing had stopped it from raising this objection before the Authority under the Act. By not doing so, he has concised and condoned it.

12. Another argument on behalf of the petitioner is that there was no cause of action against the petitioner. Reliance is placed on the findings of the Supreme Court in A. Shanmugam vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam and Others, (2012) 6 SCC 430 wherein the findings of Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria, 3 (2012) 5 SCC 370 dealing with broad guidelines provided by the court have been discussed. The relevant portion of Maria Margarida Sequeria Fernandes's case (supra) is reproduced as under:

“72. The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

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xxxxx

xxxxx

74. If the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject the claim or pass a decree on admission. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.

75. In pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with specificity about who was the owner, on what date did he enter into possession, in what capacity and in what manner did he conduct his relationship with the owner over the years till the date of suit. He must also give details on what basis he is claiming a right to continue in possession. Until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence.”

13. I concur with the learned counsel for the petitioner and also give due consideration to the findings relied upon by the learned counsel for the petitioner that the pleadings must disclose a cause of action. In the present case, there was no stage for framing the issues since the petition was not contested by any of the respondents mentioned in the applications before the

Authority of minimum wages. Learned counsel for the petitioner is wrong when he states that the various applications under Section 20 (2) of the Act did not disclose any cause of action. The applicants in the applications have clearly narrated all the facts constituting the cause of act relating to non-payment of minimum wages as per the notifications of the Government of NCT of Delhi. Learned counsel for the petitioner has also placed his emphasis on the use of word 'was' in para 1 of the applications under Section 20 (2) before the Authority under the Act and has stated that while expression 'was' had been used in para 1 of the applications, in subsequent paras of the applications, the expression 'is' has been used. It is submitted that while in para 1 of the applications the applicants/workers have contended that they 'were' working with the management, in subsequent paragraphs they had stated that they were working with the management even on the date of applications. To my mind there is no discrepancy in these pleadings and no contradictions. The workmen have in all the paragraphs except para no.1 have stated that they have been engaged and working with the respondent but were not paid the minimum wages. Learned counsel for the petitioner has also placed on record the copy of the entire trial record before this court and from the affidavits of the workers it

is clear that they had categorically stated that they were currently in the employment. In the light of proved facts on record the use of expression 'was', in para no.1 most to most can be considered a typographical mistake and thus by no stretch of imagination can be said to be sufficient to defeat the claim of the workmen. In Sadhu Ram's case (supra) the Supreme Court has clearly stated that "*the claim ought not to be rejected on technical grounds*". Moreover, this is not sufficient to constitute an error apparent on the face of record when record shows that the findings are based on the evidences led before the concerned authority.

14. The third argument of the learned counsel for the petitioner is that the authority under minimum wages ought not to have recorded the evidence and recording of evidence had vitiated the findings. I am unable to fathom this reason because under the law even in ex-parte cases, the court is bound to record the evidence. The burden to prove his case is upon the person who has come before the court with a relief. The authority would have acted contrary to the principles of natural justice or in violation of established principle of law, had it not proceeded to record the evidence and rejected the claim of the workers without giving them opportunity to prove their case.

15. It is further argued that it was respondent no.2 alone who could be

held liable by the authority under minimum wages Act. As per the principles of law laid down by the Supreme Court in Syed Yakoob's case (supra), it is apparent that the findings of the fact recorded by the tribunal cannot be upset unless it is shown that the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court.

16. In the present case on the basis of the evidence led before the tribunal, the tribunal had reached to the conclusion that the liability rested with the present petitioner to make the payment. This finding of fact therefore cannot be interfered by this court unless it is shown that it is based on no evidence or on inadmissible evidence or the evidences on record have not been given due consideration. Even the contentions of the petitioner in this petition wherein it is stated that the petitioner was releasing money to the contractor as per the bills furnished by him and that the petitioner had no suspicion in his mind that the Nursing Orderlies i.e. the workers supplied by the contractor, had been paid less than minimum wages, shows that the

liability to pay arrears of wages lies with petitioner. Now since the Authority under the Act has determined that the workers were paid less than minimum wages, the court is unable to understand why the petitioner is feeling shy in making the payment of arrears of wages.

17. The petitioner has also relied on the findings in the case of **Rajasthan State TPT Corpn. & Anr. vs. Bajrang Lal** in Civil Appeal No.4104 of 2007 wherein the Supreme Court has held as under:

12. It is settled proposition of law that a party has to plead the case and produce/adduce sufficient evidence to substantiate his submissions made in the plaint and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas. (Vide: M/s. Larsen & Toubro Ltd. & Ors. v. State of Gujarat & Ors., AIR 1998 SC 1608; National Building Construction Corporation v. S. Raghunathan & Ors., AIR 1998 SC 2779; Ram Narain Arora v. Asha Rani & Ors., (1999) 1 SCC 141; Smt. Chitra Kumari v. Union of India & Ors., AIR 2001 SC 1237; and State of U.P. v. Chandra Prakash Pandey, AIR 2001 SC 1298.)

13. In M/s. Atul Castings Ltd. v. Bawa Gurvachan Singh, AIR 2001 SC 1684, this Court observed as under:—

“The findings in the absence of necessary pleadings and supporting evidence cannot be sustained in law.”

18. I concur with the argument of the learned counsel for the petitioner

that unless there is a pleading, no evidence can be led and any evidence beyond pleadings is of no consequence. In the present case, the workers have categorically pleaded that they were paid less wages than the minimum wages and have led their evidence on those pleadings. It is not a case where there was no pleadings and no evidence.

19. The contentions and arguments of petitioner have no merit. The petitioner has failed to make out any ground to set aside the order dated 04.09.2014.

20. For the foregoing reasons, the writ petition is dismissed. No orders as to cost.

C.M.No.6711/2015 (for stay)

In view of dismissal of the writ petition, this application is dismissed as infructuous.

**DEEPA SHARMA
(JUDGE)**

APRIL 23, 2015
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