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

Date of Decision: 29th September, 2015

+ W.P.(C) 8444/2011

REHABILITATION MINISTRY EMPLOYEES CO-OPERATIVE
HOUSE BUILDING SOCIETY

..... Petitioner

Through Mr. Vijay Kumar Rana, Advocate

versus

RAMJAS YADAV & ORS.

..... Respondent

Through Mr. Rakesh Shukla, Advocate for R-1to8

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. The order dated 10th October, 2011 of the Dy. Labour Commissioner in Petition No.MW/SD/03/2010/10289 awarding wages along with one time penalty purportedly under the Minimum Wages Act, 1948 (in short, “the Act”) to the Respondents is under challenge in this writ petition.

2. The petitioner is a society looking after the welfare of the members of the society. Respondent Nos. 1 to 8 were looking after the maintenance work and were being paid as per the wages prescribed in the Act by the Govt. of NCT. A claim was raised by the respondents regarding non-payment of their wages as per the minimum wages for the period July, 2009 to December, 2009 for which they were entitled. The claim petition filed by the respondent was contested by the petitioner, inter alia, on the grounds that the wages were paid to the respondents as per the Act and revised rates prescribed by the Govt. of NCT. It was further alleged that they abstained from work from 5th October, 2009 to 29th October,

2009 and, therefore, on the principle of “no work no pay”, the wages for this period were not paid. After examining the respondents and the documents on record, the authority concerned came to a conclusion that the petitioner violated the provisions of the Act and did not pay them wages from 5th October, 2009 to 29th October, 2009 and accordingly passed the impugned order.

3. Assailing the impugned order, the learned counsel for the petitioner submits that the dispute as raised by the respondent cannot be adjudicated under Section 20(1) of Minimum Wages Act as there was no dispute about the rates of wages. Reliance was placed on *M.L. Gupta vs. City Magistrate, Lucknow and Anr.*, AIR 1960 Allahabad 541; *Manganese Ore (India) Ltd. vs. Chandi Lal Sadu & Ors.* AIR 1991 SC 520 and *Sri Binod Kumar Agrawal vs. The Regional Labour Commissioner (Central) and Anr.*, 1992 LAB. I.C. 1303.

4. Counsel further submits that the question whether during the period 5th October, 2009 to 29th October, 2009, the petitioner did not allow the respondents to work or the respondent did not work and in fact had gone on strike cannot be gone into by the authority under the Act. Moreover, the claim of the respondent from July, 2009 to December, 2009 has been found to be false and except for a limited period for which they were not paid on the principle of “no work no pay”, the claim was not entertainable by the Authority under the Act. The order is without jurisdiction and, as such, deserves to be set aside.

5. On the other hand, the counsel for the respondent submitted that the provisions of Section 20(3) of the Act are in *pari materia* with provisions of Section 15(3) of Payment of Wages Act. The plea of lack of jurisdiction was never raised before the competent authority. The petitioners subjected themselves to the jurisdiction with no objection taken, participated in the proceedings without protest and replied on merits, as such, there is no failure of justice. Therefore, the

impugned order of the Competent Authority is just and valid. There was no lack of inherent jurisdiction of the Minimum Wages Authority. Reliance was placed on ***UOI vs. Pam Development Pvt. Ltd (2014) 4 SCC (Civ.) 117.***; ***Ramchandran vs. Valliammal Mad HC***, CRP (PD) (MD) No. 2105 of 2011; ***Kishore Samrite vs. State of UP***, Criminal Appeal No. 1406/2012, SC.

6. Counsel further submits that the proceedings under the writ jurisdiction is of a summary nature. The petitioners cannot be allowed to invoke the writ jurisdiction of this Court for agitation of disputed questions of facts. Reliance was placed on ***Chairman, Grid Corporation of India Ltd.. vs. Sukamani Das (Smt.) and Anr.***, (1999) 7 SCC 298 and ***Manager, St. Thomas U.P. School, Kerala and Anr. vs. Commissioner & Secy. to General Education Deptt. and Ors.***, (2002) 2 SCC 497.

7. Lastly, it was submitted that the petitioner does not fall within the definition of Industry and the respondents are not workmen as held in ***Som Vihar Apartment Owners' Housing Maintenance Society Ltd. vs. Workmen*** (2002) 9 SCC 652 and, therefore, Industrial Disputes Act, 1947 has no application.

8. I have given my thoughtful consideration to the respective submissions of learned counsel for the parties and perused the judgments relied upon by them.

9. A perusal of the impugned order reveals that the respondents/claimants filed the claim alleging that they were not paid their wages as per the minimum wages notified by the Govt. of NCT of Delhi for the period July, 2009 to December, 2009 for which they were entitled. The petitioner/management took the plea that the society always paid to these daily wage cash workers the minimum wages as revised from time to time by Govt. of NCT of Delhi. The wages and arrears for the period July, 2009 to December, 2009 have already been

paid to them. It was further alleged that on one occasion former Secretary Sh. R.P.Pathak verbally cautioned Sh. Ramjas one of the workers to be careful in future on account of disobedience and dereliction of duty. Instead of being apologetic, Sh. Ramjas struck the work and other daily wage casual workers also joined him in the strike w.e.f. 6th October, 2009 to 29th October, 2009 and did not perform their duty. Therefore, their demand for wages for the period for which they did not perform their duty was not at all justified on the principle of “no work no pay” as ruled by the Supreme Court of India. Competent Authority did not give any specific finding regarding the claim of the respondent for the period July, 2009 to December, 2009. Claimants were awarded earned wages for the period 5th October, 2009 to 29th October, 2009 along with “one time penalty”.

10. From the perusal of the facts, the questions for consideration before this Court are :-

- (i) When there is no dispute about the rate of wages, whether the claim arising out of non-payment of wages is entertainable by the Authority under the Minimum Wages Act.
- (ii) Whether the petitioner is estopped from challenging the impugned order on the ground of lack of jurisdiction having submitted to the jurisdiction of the Competent Authority and participated in the proceedings.

11. A survey of the provisions of the Minimum Wages Act, 1948, would point out, as the preamble thereto has also stated, that it was an Act to provide for the fixing of minimum rates of wages in certain employments. Section 2 has defined certain expressions including an "employer" and "scheduled employment". The term "wages" too has been defined and likewise the expression "employee".

12. The next Section gives power to the appropriate Government to fix minimum rates of wages which it can do in the case of employments specified in the schedules which are part of the Act. The minimum wages can be fixed with reference to hour, day and month or any larger period as should be prescribed. Section 4 describes what the minimum rate of wage shall consist of. In Section 5 the procedure for fixing and revising the wages is laid down and the next few sections lay down the establishment of Advisory Board etc. to advise the Government in relation to its duties under the Act.

13. The next relevant Section is Section 12 which says that where in respect of any scheduled employment a notification under Section 5 is in force, the employer shall pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed for the particular employment. Section 13 is not attracted in the present case but Section 14 which also is not directly relevant provides for payment of work done in excess of the number of hours constituting a normal working day.

14. The next few sections make provision for calculating wages in certain cases and the liability of the employer to maintain appropriate records and registers. Under Section 19, the State Government can appoint inspectors; their duties too are laid down in this section. Then comes Section 20 under which the proceedings were held by the competent authority in the instant case. The relevant portion of it is thus;

"20. Claims - (1) The appropriate Government may, by notification in the Official Gazette, appoint..... a stipendiary Magistrate to be the Authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages or in respect of the payment of remuneration for days of rest or of work done on such days under Clause (b) or Clause (c) of Sub-section (1) of Section 13 or of wages at the overtime rate under Section 14, to employees employed or paid in that area.

(2) Where an employee has any claim of the nature referred to in sub-section (1), the employee himself, or any inspector..... may apply to such Authority for a direction under subsection (3) :

Provided

Provided

(3) When any application under Sub-section (2) is entertained, the Authority shall hear the applicant and the employer, or give them an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under this Act, direct-

(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 the amount 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, together 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 the application.

(4)

(5)

(6) Every direction of the Authority under this Section shall be final.

(7) Every Authority appointed under Sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such Authority shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter 35 of the Code of Criminal Procedure (V of 1898)".

The only other provision of the Act to which reference is necessary is Section 24 which debars a court from entertaining any suit for the recovery of wages in so far as the same claim forms the subject of an application under Section 20 or could have been recovered by an application under that section.

15. The Apex Court in the case of ***Town Municipal Council, Athani vs. Presiding Officer, Labour Court, Hubli and Ors. etc.***, AIR 1969 SC 1335

construing various provisions of the Act like Section 2(h), Section 13(1), Section 14(1) and Section 20 made the following observations at pages 1543 and 1544:

“We have mentioned these provisions of the Minimum Wages Act, because the language used at all stages in that Act leads to the clear inference that that Act is primarily concerned with fixing of rates-rates of minimum wages, overtime rates, rate for payment for work on a day of rest-and is not really intended to be an Act for enforcement of payment of wages for which provision is made in other laws, such as the Payment of Wages Act No. 4 of 1936, and the Industrial Disputes Act No. 14 of 1947. In Section 20(1) of the Minimum Wages Act also, provision is made for seeking remedy in respect of claims arising out of payment of less than the minimum rates of wages or in respect of payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of Sub-section (1) of section 13 or of wages at the overtime rate under section 14. This language used in Section 20(1) shows that the Authority appointed under that provision of law is to exercise jurisdiction for deciding claims which relate to rates of wages, rates for payment of work done on days of rest and overtime rates. If there be no dispute as to rates between the employer and the employees, section 20(1) would not be attracted. The purpose of Section 20(1) seems to be to ensure that the rates prescribed under the Minimum Wages Act are complied with by the employer in making payments and, if any attempt is made to make payments at lower rates, the workmen are given the right to invoke the aid of the Authority appointed under Section 20(1). In cases where there is no dispute as to rates of wages, and the only question is whether a particular payment at the agreed rate in respect of minimum wages, overtime or work on off-days is due to a workman or not, the appropriate remedy is provided in the Payment of Wages Act. If the payment is withheld beyond the time permitted by the Payment of Wages Act even on the ground that the amount claimed by the workman is not due, or if the amount claimed by the workman is not paid on the ground that deductions are to be made by the employer, the employee can seek his remedy by an application under section 15(1) of the Payment of Wages Act. In cases where section 15 of the Payment of Wages Act may not provide adequate remedy, the remedy can be sought either under section 33C of the Act or by raising an industrial dispute under the Act and having it decided under the various provisions of that Act. In these circumstances, we are unable to accept the submission made by Mr. Sen on behalf of the appellant that Section 20(1) of the Minimum Wages Act should be interpreted as intended to cover all claims in respect of minimum wages or overtime payment or payment for days of rest even though there may be no dispute as to the rates at which those payments are to be claimed. It is true that, under Section 20(3), power is given to the Authority dealing with an application under Section 20(1) to direct payment of the actual amount found due; but this, it appears to us, is only an incidental power granted to that Authority, so that the directions made by the Authority under Section 20(1) may be effectively carried

out and there may not be unnecessary multiplicity of proceedings. The power to make orders for payment of actual amount due to an employee under Section 20(3) cannot, therefore, be interpreted as indicating that the jurisdiction to the Authority under Section 20(1) has been given for the purpose of enforcement of payment of amounts and not for the purpose of ensuring compliance by the employer with the various rates fixed under that Act. This interpretation, in our opinion, also harmonises the provisions of the Minimum Wages Act with the provisions of the Payment of Wages Act which was already in existence when the Minimum Wages Act was passed. In the present appeals, therefore, we have to see whether the claims which were made by the workmen in the various applications under Section 33C(2) of the Act were of such a nature that they could have been brought before the Authority under Section 20(1) of the Minimum Wages Act inasmuch as they raised disputes relating to the rates for payment of overtime and for work done on weekly off days."

(emphasis added)

16. This decision was followed in the case of ***Manganese Ore (India) Ltd.*** (*supra*) wherein it was held:-

"In the present case there was no dispute regarding the rates of wages and it is admitted by the parties that the minimum rates of wages were fixed by the Government of India under the Act. The workmen demanded the minimum wages so fixed and the appellant denied the same to the workmen on extraneous considerations. Under the circumstances the remedy Under Section 20 of the Act was not available to the workmen and the Labour Court rightly exercised its jurisdiction Under Section 33-C(2) of the Industrial Disputes Act, 1947."

17. In ***Binod Kumar Agrawal*** (*supra*), there was a claim by the workman regarding short fall in the amount of wages paid to him. The Regional Labour Commissioner found that short fall in wages was made up and, therefore, compensation was awarded under Section 20(3) of the Minimum Wages Act. The question for determination before the Orissa High Court was whether in the facts and circumstances of this case, initiation of the proceedings under Section 20 of the Act was legal and valid. Relying upon the decisions of the Apex Court in ***Town Municipal Council, Athani***(*supra*) and of ***Manganese Ore (India) Ltd.***(*supra*), it was held that the proceeding initiated under Section 20(2) of the Act was not maintainable. There was no dispute regarding the rate of wages payable to the workman. The claim of the workman was that he was not paid the

full amount due towards wages during the relevant period. It was not disputed that the balance amount has been paid to the workman. It was observed that even if the said amount had not been paid, proceedings under the Act will not lie since the purpose for the enactment is to fix the minimum rate of wages in certain employment for enforcement of the wage at the prescribed rate. Appropriate proceedings is to be initiated under the Payment of Wages Act or u/s 33 (c)(2) of the Industrial Disputes Act, 1947. Therefore, the authority was not competent to pass any order u/s 20(3) of the Act. That being so, the order was quashed.

18. Again in *M.L. Gupta (supra)*, there was no dispute about the rate of wages. The claim was raised regarding non-payment of the wages. The competent authority passed an order directing the employer to pay the arrears of wages as well as compensation. A challenge was raised before Allahabad High Court. The question was whether the claim for arrears of wages is sought to be payable by an employer to the employee is entertainable under Section 20 of the Act. It was held that since the arrears were not in respect of wages for work done on days of rest etc., it was again not a claim to which Section 13 was applicable. Section 14 too is not attracted as it was never a claim for overtime work. On the other hand, the claim was precisely for the amount of arrears said to be payable to the employees not as difference arising out of payment of less than the minimum wage but from the fact that no payment at all had been made. Section 20 does not provide the machinery for recovery of arrears of wages independently of any dispute arising from controversy as regards the minimum wage payable. Proceedings under this Section can be commenced where a dispute exists as regards the rate of wage payable. That being so, the Magistrate has no jurisdiction to make the impugned order and the same was accordingly set aside.

19. In view of the aforesaid decisions, it is clear that the provisions of the Act will be applicable only when there is a dispute regarding rate of wages. In the

instant case, there was no dispute regarding the rate of wages. The claim was confined to arrears of wages for the period July, 2009 to December, 2009. It also did not find favour with the Competent Authority in view of the plea taken by the respondent that the wages and arrears for this period have already been paid to the respondent except for the period 6th October, 2009 to 29th October, 2009 when the respondents did not perform their duty. The question whether the respondent struck work during this period as alleged by the petitioner or were not allowed to perform their duties as alleged by the respondent is a disputed question of fact which was neither gone into by the Competent Authority nor can be adjudicated in this writ petition. Be that as it may, since the claim raised by the respondent did not fall within the ambit of Minimum Wages Act, therefore, the competent authority could not have entertained the dispute.

20. Now I shall take up the objection taken by the learned counsel for the respondent that having once submitted to the jurisdiction of the competent authority and having taken no objection and participated in the proceedings without protest, the petitioner cannot raise this objection for the first time in this writ jurisdiction for which reliance has been placed on ***Ramchandran*** (supra) **and** ***Kishore Samrite*** (supra).

21. In ***Hira Lal Patni vs. Sri Kali Nath***, AIR 1962 SC 1999, it was held by Hon'ble Supreme Court that it is well settled that the objection as to local jurisdiction of a court does not stand on the same footing as an objection to the competence of a court to try a case which goes to the very root of the jurisdiction and where it is lacking, it is a case of inherent lack of jurisdiction. It was further held that an objection as to the local jurisdiction of a court can be waived and this principle has been given a statutory recognition by enactments like Section 21 of the Code of Civil Procedure. In the said decision the Supreme Court also referred to the decision of the Privy Council in ***LEDGARD vs. BULL*** reported in 13 I. A.

134 (P.C.) which decision is an authority for the proposition that consent or waiver can cure defect of jurisdiction but cannot cure inherent lack of jurisdiction. In the said case by consent of the parties, the case was transferred to the court of the District Judge for convenience of trial and in that context it was laid down by the Privy Council that as the court in which the suit had been originally instituted was entirely lacking in jurisdiction, in the sense that it was incompetent to try it, whatever happened subsequently was null and void because consent of parties could not operate to confer jurisdiction on a court which was incompetent to try the suit. After referring to the aforesaid decision of the Privy Council, the Supreme Court went on to hold that competency of a court to try a case goes to the very root of the jurisdiction and where it is lacking, it is a case of inherent lack of jurisdiction.

22. Therefore, the legal principle which is established is that if the plea raised goes to the root of the question and concerns inherent lack of jurisdiction of the court deciding the matter, such plea can be allowed to be raised even at a later stage, for it goes to very root of the matter. Such a plea concerning inherent lack of jurisdiction of court to decide the matter can be raised before the High Court in a writ jurisdiction, for the first time, and such a plea is required to be entertained to do justice amongst the parties. On the other hand, if the plea raised concerns lack of territorial or pecuniary jurisdiction, the same could be waived by a party by submitting to its jurisdiction and by not raising at the earlier stage. Therefore, it is necessary to apply the aforesaid settled principles of law to the facts of the present case.

23. As stated above, the dispute was not pertaining to the rate of wages but regarding the arrears of wages and, therefore, the provisions of Minimum Wages Act were not applicable. That being so, the competent authority lacks inherent jurisdiction to entertain the dispute. Consequently, despite the fact that the petitioner having subjected to the jurisdiction of the competent authority which

passed the order can be permitted to challenge the jurisdiction of the authority on the ground of inherent lack of jurisdiction.

24. In ***Pam Development Pvt. Ltd.*** (*supra*), where the objection with regard to the jurisdiction of the Arbitral Tribunal before Arbitrator was not permitted to be raised for the first time in High Court. A perusal of the judgment reveals that there was an arbitration clause pursuant to which the Sole Arbitrator was appointed by the High Court. Constitution of the Arbitral Tribunal to entertain the dispute was not challenged at the relevant juncture. After the Award was passed objections under Section 34 of the Arbitration Act, 1996 were filed before the High Court and at that time a plea regarding lack of jurisdiction was taken which did not find favour with the Single Judge of the High Court and the Division Bench of the High Court also dismissed the appeal. The matter went to the Supreme Court and it was held that since the appellant failed to raise the plea of jurisdiction before the Arbitral Tribunal, the same could not be allowed to be raised for the first time in the High Court or before the Supreme Court. It was not a case of lack of competence of the Arbitral Tribunal to adjudicate the dispute. Therefore, this judgment does not help the respondent.

25. Similarly in ***Kishore Samrite*** (*supra*) the challenge was that the writ petition was improperly instituted before the Single Judge of the High Court whereas it should have been before the Division Bench. It was observed that it may be an administrative lapse but the Court did not lack inherent jurisdiction. Therefore, such a plea was not available.

26. Again in ***Ramachandran***(*supra*) objection regarding pecuniary jurisdiction of the Court was not allowed to be raised for the first time before appellate/revisional court.

27. Things are entirely different in the instant case. Since the dispute raised in the claim petition did not fall within the ambit of Minimum Wages Act, therefore, the authority concerned lacked inherent jurisdiction to entertain the dispute. That being so, such an objection regarding lack of jurisdiction can be taken by the petitioner even before this Court and since the authority lacks jurisdiction, therefore, impugned order cannot be sustained and is accordingly set aside.

28. Respondent Nos.1 to 8 are, however, at liberty to get their grievances redressed before the appropriate forum.

29. The petition stands disposed of accordingly leaving the parties to bear their own costs.

(SUNITA GUPTA)
JUDGE

SEPTEMBER 29, 2015
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