

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.02.2016

Coram
The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No. 30777 of 2015
M.P.No.1 of 2015
and
W.M.P.No.1811 of 2016

Venture Power System India Pvt. Ltd.,
rep. by its Director,
having Office at A.30, D-5, Phase II,
Zone -B, Mepz, Thambaram Sanatorium
Chennai - 600 045.

...Petitioner

Vs.

1. The Deputy Commissioner of Labour - 2/
Authority under the Minimum Wages Act-2,
DMS Complex, Teynampet, Chennai- 6.
2. Chennai Yetrumathi Village Uzhiyargal,
Matrum Pothu Thozhilalar Sangam,
15, Kannan Street, Kadaperi,
Tambaram, Chennai - 600 045.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, to call for records pertaining to M.W.I.A.No.2 of 2014, and to quash the order, dated 23.07.2015, passed by the first respondent, condoning the delay of 3027 days in preferring the application under Section 20(2) of the Minimum Wages Act, 1948, by the second respondent.

For Petitioner सत्यमेव जयते Mr.K.V.Shanmuganathan

For Respondent-1 : Mr.R.M.Muthukumar
Additional Government Pleader

For Respondent-2 : Mr.N.G.R.Prasad, Senior Counsel
for M/s.Row and Reddy Associates

O R D E R

Heard Mr.K.V.Shanmuganathan, the learned counsel appearing for the petitioner and Mr.N.G.R.Prasad, learned Senior Counsel appearing for M/s.Row and Reddy Associates, for the second respondent.

2. The petitioner is the Management, first respondent/Deputy Commissioner of Labour, is the Authority under the Minimum Wages Act, and the third respondent is the Union, and they shall be referred as such, throughout this judgment and order.

3. The Management has challenged the order passed by the Authority, under the provisions of Minimum Wages Act, 1948 (the Act), dated 23.07.2015, in and by which, the Authority has condoned the delay of 3027 days in filing the Application, claiming for minimum wages by the Union.

4. The following are relevant for disposal of the Writ Petition:-

i) The Management is a manufacturing Company, which has established its Unit in Madras Export Processing Zone, and it is 100% export oriented Unit. It is stated that there are about 215 permanent workmen and contract labours. The workmen of the Management, represented by the Union, filed an Application before the Authority seeking for implementation of the notification issued by the Government, fixing the minimum wages, and claimed for difference in wages from November, 2001 to March 2014.

ii) In terms of first proviso under Section 20(2) of the Act, every application, claiming minimum wages, shall be made within a period of six months, from the date on which, the minimum wages or other amount becomes payable. The second proviso under Section 20(2) empowers the Authority to entertain such Application beyond the period of six months, if he is satisfied that, sufficient cause has been shown by the applicant for not making the application within the period of six months.

iii) In the instance case, the Union submitted that consistently, the Management has not been implementing various Government Orders, fixing the minimum wages for that category of workmen. In this regard, the following Governments Orders, in (a) G.O.Ms.No.997, dated 19.05.1988, (b) G.O.(D) No.1051, dated 03.08.1995, (c)G.O.(2D) No.17, dated 24.04.2002, (d) G.O.(2D) No.53, dated 03.07.2007 and (e) G.O.48, dated 05.10.2012, were referred to.

iv) It appears that, initially, the workmen were not members of the Union, and they are said to have been making representations to the Management to pay minimum wages. The allegation is that threat was meted out to the workmen, and thereafter, they have all joined the Union, and presented the Application. Therefore, the Union requested the Authority to condone the delay of 3027 days in filing the Application and to entertain the same. The Management filed a counter statement, from which, it is seen that, they have merely stated that the

Government Orders, as referred supra, are not applicable to them, as they are involved in the manufacturing of electrical goods. However, this issue cannot be adjudicated at this juncture, nor, could have done by the Authority, since the application is yet to be entertained and decided on merits. The Management would state that the workmen have deliberately kept quiet for all these years without any rhyme or reason, and have approached the Authority with gross delay, therefore, the delay should not be condoned.

v) The Authority considered the entire factual matrix, and took note of the judgments of the Hon'ble Supreme Court [mentioned infra as a) to c)] and the unreported decision of the Karnataka High Court rendered in Civil Revision Petition No.17 of 1996, dated 05.04.1968, in re (Town Muncial Council Vs. Ramachandra Dattatraya Patil) and held that, the Authority is satisfied with the explanation for the delay and condoned the delay by exercising his power conferred under second proviso to Section 20(2) of the Act.

a) (Collector Land Acquisition Anantnag and another Vs. Mrs.Katiji and others), (1987) 1 L.L.J. 500.

b) (N.Balakrishnan Vs. M.Krishnamurthy) (1998) 6 S.C. 242 : (1998) 7 S.C.C. 123.

c) (State of Bihar and others Vs. Kameshwar Prasad Singh and another) JT (2000) 5 S.C. 389.

5. The learned counsel appearing for the Management submitted that the workmen have not given any reason for approaching the Authority belatedly, and therefore, the order passed by the Authority, condoning the inordinate delay is erroneous. In support of his contention, the learned counsel referred to the decision rendered in re (Rambal Ltd., Vs. The Deputy Commissioner of Labour II Cum Authority) reported in (2015) 2 C.T.C. 630.

6. Per contra, the learned Senior Counsel appearing for the Union submitted that the workmen have come to know of the notification issued by the Government only at a later point of time, and as soon as they became aware of it, they sought for implementation of the same, by making representations, but their request was not considered by the Management, and they were put to prejudice. Thereafter, the workmen joined with the Union, and the Union presented the Application on behalf of the workmen, claiming for payment of minimum wages. The Authority, having heard the parties (viz., the Union and Management), and taking into consideration the fact that illiteracy is one of the reasons for the workmen for not vindicating their grievance at the relevant point of time, and they were aware of their rights only after they joined the Union, exercised discretion, and condoned the delay, and this Court should not re-examine the matter, as if, it is the second appellate authority over the order passed by the Authority.

7. After hearing the learned counsels for the parties and perusing the materials placed on record, it is seen that the delay, which was sought to be condoned in filing the application for payment of minimum wages, is 3027 days. It is no doubt true that, it is inordinate, and under normal circumstances, the applicant, who seeks for condonation of such a long delay, has to show sufficient cause for not having been able to approach the forum within the time frame. In the instant case, we are dealing with the issue related to the payment of minimum wages. It is settled legal position that the employer is bound to pay minimum wages and non payment of the same is illegal. Viewed in this angle, the approach of the Authority under the Minimum Wages Act should be slightly different from normal cases, which would arise in application filed under Section 5 of the Limitation Act. The workmen have stated that they have come to know of the notification only at a later point of time, and when they sought for implementation of the same, their request was not considered, and there was also threat to their employment. It is only thereafter, they have joined the Union, and presented the Application before the Authority. This averment appears to be have not been specifically denied by the Management.

8. In fact, a similar issue came up for consideration before this Court, in a Writ Petition, being W.P.No.33738 of 2007, dated 25.10.2007, wherein, a prayer was made to condone the inordinate delay in filing the application for payment of minimum wages, and the Court pointed out that, if the workmen had approached the Labour Court by filing application under Section 33 (2) of the Industrial Disputes Act, 1947, for computing the minimum wages payable, the question of limitation would not arise. The Court further held that the question of payment of minimum wages is continuing cause of action and held that the application should be not thrown out on the ground of delay. This decision was followed by the Hon'ble Judge M.M.Sundresh, J., in W.P.12971 of 2008, in re (Rambal Ltd., referred supra.

9. At this juncture, it is submitted by the learned counsel appearing for the Management that against the said order passed in W.P.No.12971 2008, Writ Appeal has been preferred. In any event, the question, whether the delay in filing the Application has to be condoned or not? has to be considered on a case to case basis, and depends upon the facts and depends upon the facts and circumstances of each case.

10. Thus, the first respondent-Authority considering the purpose of the legislation, exercised power vested under Section 22 of the Minimum Wages Act, and the exercise of discretion by the Authority clearly shows that there is neither arbitrariness in the order condoning the delay in filing the application, nor, there is any deliberate inaction on the part of the workmen

to approach the authority at this juncture. It is a settled legal principle that law of Limitation is founded on public policy and not meant to destroy the rights of the parties but to see that the party does not resort to any dilatory tactics, and deliberately approach the forum belatedly. If the party is deliberately negligent, or for certain mala fide reason, has belatedly approached the Court or Forum, then, it could be a case, where, the delay will have to be refused to be condoned. The case on hand is not one such case, nor, there is any such allegation made by the Management that the workmen were guilty of negligence, or had mala fide intention to purposely file the Application belatedly. Thus, in the absence of all these issues in the instant case, this Court is not inclined to interfere with the discretion exercised by the Authority, which cannot be held to be either perverse, nor untenable.

11. For all the abovesaid reasons, the Management has not made out a case for interference with the impugned order. Accordingly, the Writ Petition fails and it is dismissed.

12. It is made clear that this Court has not gone into the merits of the claim made by the Union or the defence that may be raised by the Management. It is open to the parties to agitate the same before the Authority, who shall hear and decide the matter on merits and in accordance with law. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

The Deputy Commissioner of Labour - 2/
Authority under the Minimum Wages Act-2,
DMS Complex, Teynampet, Chennai- 6.

1 cc to M/s. Row and Reddy, Advocate, sr. 7077
1 cc to Mr.Shakuganathan, Advocate, Sr. 6483
1 cc to Government Pleader, Sr. 6556

Writ Petition No. 30777 of 2015

MG (CO)
kk 23/2