HON'BLE SRI JUSTICE SURESH KUMAR KAIT

Writ Petition No.31608 of 2016

ORDER:

Vide present writ petition, the petitioner seeks a direction thereby declaring the impugned order of the 1st respondent in Application No.46/76/2015-E1, dated 27.07.2016, as illegal and arbitrary.

2. In the writ affidavit, it is stated that the petitioner-Corporation contracted out the job of the Loss Prevention and Safety Services for its Rajahmundry Asset to the 2nd respondent for the years 2010 to 2013. This particular contract is a job contract specifying the area therein for its applicability and does not specify the number of persons to be employed by the contractor, of course insists on the efficiency in performance. The nomenclature of the contract was designed to give an indication of the job to be performed by the contractor, which includes the duties of watch & ward. The 'watch & ward' is included in the scheduled employment under the Minimum Wages Act, 1948 (for short 'the Act'). Therefore, the Central Government, being the appropriate government under the Act, has prescribed the minimum wages payable to the work force of the 2nd respondent, being employed in the scheduled employment.

3. Learned counsel for the petitioner submitted that under the Act 'Employer' means 'any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under the Act', and includes, except in sub-section (3) of Section 26 –

> "(i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under clause (f) of Section 7 of the Factories Act, 1948 (63 of 1948) as manager of the factory;
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> (ii) in any scheduled employment under the control of India in respect of which minimum rates of wages have been fixed under this Act the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is so appointed, the head of Department;
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> (iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the person appointed by such authority for the supervision and control of employees or where no person is so appointed the Chief Executive Officer of the local authority;
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> (iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person responsible to the owner for the supervision and control of the employees or for the payment of wages."

4. He further submitted that 'wages' as defined under the Act means all remuneration capable of being expressed in terms of money which would if terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such establishment and includes house rent allowance and does not include other than 'employer'. There is no other concept like 'principle employer' etc.

5. Learned counsel for the petitioner further submitted that the Authority under the Act, in response to claim application dated 16.03.2015 filed by ONGC, Krishna Godavari Contract Workers Union, represented by its General Secretary for payment of difference of minimum wages to its members i.e., contract workers employed on watch & ward duties by the contractor-the 2nd respondent, for the period from 01.04.2013 to 07.08.2013 amounting to Rs.46,20,569/- , has

issued summons dated 14.09.2015 to the petitioner by arraigning the petitioner as 'Principle Employer', even though there is no such concept of 'Principle Employer', under the Act. Accordingly, the 1st respondent vide order dated 10.10.2013 in Application No.46/18/2013-E1, however, directed the petitioner to make payment of Rs.1,10,70,672/-, as short payment of minimum wages payable to the work force engaged by the 2nd respondent. The petitioner, being the instrumentally of the State, has complied with the order of the Authority by making payments to the contract labour as per the list given by the 2nd respondent observing required procedure under Section 21(4) of the Contract Labour (Regulation & Abolition) Act, 1970 and recovery from the contractor is in process.

6. Learned counsel for the petitioner further submitted that the proceedings for the claim started on 29.02.2016. Then the matter was adjourned to 29.04.2016, on which date, hearing could not take place due to unavoidable circumstances of the Authority, accordingly, adjourned to 15.07.2016. On the said date, the petitioner sought adjournment stating that they have not received claim application papers filed by the applicant for submission of their reply. However, the Authority has passed impugned order dated 27.09.2016, which is three days before his retirement, in harried manner without following the procedure.

7. Learned counsel for the petitioner has relied upon the decision in '*Shri Rajiv K.Kataria vs. Sh.Ajay*', decided on 04.12.2015 in WP (C) No.351 of 2015 by the High Court of Delhi, wherein, in similar circumstances, the High Court of Delhi held as follows in paras 14, 19 and 23:

> "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."

... ...

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.

... ...

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.
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> 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 Harward Law Review 731-737).
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> 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".
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> 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'."

8. Learned counsel for the petitioner further submitted that the purpose of making the provision under Section 20(3)(i) of the Act 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. In the present case, the contractor i.e., the 2nd respondent herein had supposed to pay as per minimum wages, as the petitioner had paid the amount to the 2nd respondent. Moreover, the 2nd respondent has admitted before the Authority that there is difference of amount of Rs.29,36,396/- for the period from 01.04.2013 to 07.08.2013. Thus, in view of the averments made in the said petition and in the facts and circumstances of the case, the impugned order may be set aside.

9. Sri V.Hariharan, learned standing counsel appearing on behalf of the Caveator-the 3rd respondent, submitted that the proceedings in the present case started in the year 2015 and as noted in para 3 of the

impugned order that during the course of hearing on 21.09.2015 Shri R.K.Derhegawen, Chief Manager, HR, Col. B.K.Chaudhary, Chief Manager Security and Shri S.S.Rawat, Senior Security Officer, representing the Principal Employer-ONGC, were present. Sri A.Suresh Kumar, Accounts Manager, representing the 2nd respondent herein, Sri R.Ramaswamy, General Secretary of the Union, were also present and adjourned the case to 07.10.2015 for filing written submissions of the petitioner and the 2nd respondent and to produce the relevant records on the above said date of adjournment. Accordingly, on 07.10.2015, Shri G.Ramesh, General Manager of the 2nd respondent was present and filed a copy of the letter dated 07.10.2015 along with the calculation sheet as per the physical attendance of muster roll maintained by them. The 2nd respondent herein in his letter dated 07.10.2015 stated that the period of contract under dispute was from 08.08.2010 to 07.08.2013, the same agreement was declared as null and void by the then Regional Labour Commissioner vide his order dated 10.10.2013. Based on the order, the Principal Employer i.e., the petitioner has agreed and paid the difference amount of minimum wages of Rs.1,10,70,672/- for the period from 01.10.2011 to 31.03.2013. Therefore, the payment of balance amount claimed by the 3rd respondent herein for the period from 01.04.2013 to 07.08.2013 is also the responsibility of the petitioner herein.

10. I have heard the learned counsel for the parties.

11. It is not in dispute that the 2nd respondent was a contractor of the petitioner and for the difference of amount, the petitioner had agreed to pay Rs.1,10,70,672/- and paid for the period from 01.10.2011 to 31.03.2013 to the 2nd respondent. It is also not in dispute that the petitioner appeared before the Authority on 21.09.2015 and on the very

same date, the petitioner had agreed to pay the amount under protest, however, paid the same on 29.02.2016.

12. It is also not disputed that the claim of the workers towards balance wages from 01.04.2013 to 07.08.2013, was paid by the petitioner on 29.02.2016 i.e., after almost three years.

13. As stated by the learned counsel for the petitioner that the claim was up to 07.08.2013, however, the claim was filed on 16.03.2015, it is barred by delay and latches.

14. Be that as it may, the petitioner came to know that there is difference of minimum wages on 21.09.2015, but not paid the amount at that point of time, however, paid during the proceedings on 29.02.2015. The petitioner, neither filed the reply, nor attended the proceedings after 29.02.2016, however, sent a message on 15.07.2016 stating that he had not received the claim application papers filed by the 3rd respondent herein for submission of reply. Whereas, in para 3 of the impugned order, it is recorded that the claim application filed by the 3rd respondent herein was handed over to the petitioner and the 2nd respondent and accordingly, the case was adjourned to 07.10.2015.

15. In regard to submission of the learned counsel for the petitioner that the Authority under the Act has passed impugned order three days before his retirement in a hurried manner, without giving opportunity to the petitioner, it is admitted case of the petitioner that there was difference of minimum wages and the petitioner paid an amount of Rs.1,10,70,672/- for the period from 01.10.2011 to 31.03.2013. In the present case, there would have no different view of the petitioner not to pay the amount. As admitted in the petition, the said amount of Rs.1,10,70,672/- is pending recovery from the 2nd

respondent. Therefore, the compensation and penalty granted vide impugned order dated 27.07.2016 may also be paid and recover from the 2nd respondent. The amount due to the claimant was from 01.04.2013 to 07.08.2013 and if the petitioner has paid only an amount of Rs.29,36,396/-, that is the amount which claimed due.

16. The Authority appointed under the Act, started proceedings in March 2015 and recorded admission of the petitioner and the 2nd respondent that there is difference of wages amount of Rs.29,36,376/-. The petitioner received the application on 07.10.2015 and as per the calculation sheet of the 2nd respondent, the petitioner paid the amount on 29.02.2016. The petitioner, no doubt was due to retirement, therefore, the Authority by giving short date in the matter, concluded the proceedings and passed the impugned order, which is under challenge.

17. The case cited by the petitioner in '*Rajiv K.Kataria*' (supra), was decided in a different facts and circumstances, which is not applicable to the present case.

18. Learned counsel for the petitioner submits that no reason was recorded by the Authority for awarding compensation of five times against the actual difference amount of wages i.e.,Rs.29,36,376/- x 5 = Rs.1,46,81,980/- and directed the petitioner to pay the said amount by way of demand draft drawn in favour of individual workers.

19. At this stage, learned counsel for the petitioner, relying on the decision of the Supreme Court in '*Prerna Sahygo vs. Authority under Minimum Wages and others*[1]', submits that the Authority therein had found ulterior motives in the employer's conduct and directed it to pay 8 times the wages awarded as compensation to the workmen and the

[1] (2001) 9 SCC 247

Supreme Court considered it a fit case for interference and held 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.

20. Though, I find that there is no reason recorded by the Authority to direct the petitioner to pay five times of compensation, the fact remains that earlier, the petitioner earlier also defaulted for the period from 01.10.2011 to 31.03.2013 and paid an amount of Rs.1,10,70,672/-. However, defaulted again for the period from 01.04.2013 to 07.08.2013.

21. Learned counsel for the petitioner pleaded that one time compensation may be ordered, keeping in view the decision of the Supreme Court in '*Prerna Sahygo*'s case (supra).

22. Keeping in view the facts and circumstances recorded above, I am of the view let the petitioner pay two times of the wages as compensation. Accordingly, the petitioner is directed to pay Rs.29,36,396/- as due and two time of the same is Rs.58,72,792/-, thus total compensation to be paid is Rs.88,09,188/-, within two weeks from the date of receipt of this order. Needless to state the petitioner may recover the said amount from the 2nd respondent, as per law.

23. Subject to above direction, the writ petition is partially allowed. No order as to costs. Miscellaneous petitions pending, if any, in this writ petition, shall stand closed.

SURESH KUMAR KAIT, J

Date: 19.09.2016
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