THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.No. 2072 OF 2001

ORDER:

The employer, M/s. Oblum Electrical Industries (P) Limited, filed this Writ Petition under Article 226 of the Constitution of India for issue of a Writ of *Certiorari* setting aside the order dated 09-12-2000 passed by the 1st respondent in favour of the 2nd respondent-employee.

The petitioner is a manufacturing unit situated at Industrial Estate, Balanagar, Hyderabad. The 2nd respondent initially was appointed as a store assistant on 28-11-1985 in the petitioner industry. The 2nd respondent resigned to his employment on 19-04-1997. The 2nd respondent filed a petition under Section 20 of the Minimum Wages Act, 1948 (for short, 'the Act of 1948'), alleging that the petitioner did not pay minimum wage to him during his tenure as an employee under the petitioner as per Government Orders issued from time to time, the total difference between the wage he received and the minimum wage during the said period was Rs.45,234.50 ps. and sought a direction from the 1st respondent against the petitioner for payment of the said amount of Rs.45,234.50 ps. with effect from 28-11-1985.

The petitioner in its counter before the 1st respondent resisted the claim of the 2nd respondent on the following three grounds:

(a) The petitioner industry is not a scheduled employment;

(b) The claim of the 2nd respondent is barred by limitation and

(c) The petitioner paid salary more than the minimum wage.

It is the specific contention of the petitioner that the petitioner is not a notified industry engaging scheduled employment since it is producing electrical surge arrestors and lighting arrestors which falls under power production and distribution equipment manufacturing category and finally prayed to dismiss the petition.

Upon hearing both parties, the 1st respondent held that the claim of the 2nd respondent is not barred by limitation in view of the order of this Court in W.P.No. 2506 of 2000 dated 18-02-2000 condoning delay in filing the petition. The petitioner industry is a scheduled industry engaging scheduled employment as per G.O.Ms.No. 38 and, therefore, the petitioner herein is liable to pay to the 2nd respondent the difference between the minimum wage and the actual salary paid to the 2nd respondent. It was further held that the petitioner herein did not pay salary more than the minimum wage and issued a direction, accordingly, to deposit Rs.45,234.50 ps. by way of demand draft within 30 days from the date of receipt of a copy of the order.

Aggrieved by the order passed by the 1st respondent dated 09-12-2000, the present Writ Petition is filed challenging the aforesaid order on the following grounds:

(a) The petitioner industry is not engaged in any scheduled employment as notified by Government from time to time and, in the absence of any notification, therefore, the petition before the 1st respondent under Section 20 of the Act of 1948 is not maintainable;

(b) The delay of 5,110 days was not condoned by the 1st respondent in I.A.No. 1 of 1999 filed by the 2nd respondent and condoned only 923 days but entertained the claim. However, the same was questioned in W.P.No. 2506 of 2000 but this Court, by order dated 18-02-2000, confirmed the order passed by the 1st respondent. Therefore, in the absence of condonation of abnormal delay of 5,110 days, the claim for the entire period is not maintainable and

(c) The petitioner had paid salary more than the minimum wage prescribed under the Act of 1948 to the 2nd respondent during his tenure of employment. Thereby, the petition is not maintainable. Apart from that, the details of wage variation between minimum wage and the wage paid were not mentioned anywhere. In the absence of proof, the 2nd respondent is not entitled to claim any relief.

In view of the above grounds, the order of the 1st respondent under challenge is illegal and arbitrary and prayed to set aside the same.

During hearing, learned counsel for the petitioner would contend that G.O.Ms.No. 38 has no application to the present facts of the case since the said G.O. does not cover electrical industry, it relates to payment of minimum wages to certain employees and, therefore, the finding of the 1st respondent regarding applicability of the Act of 1948 to the petitioner industry is erroneous and illegal. In I.A.No. 1 of 1999, the 1st respondent condoned only 923 days but not 5,110 days. In the absence of condonation of such abnormal delay, the claim of the 2nd respondent is barred by limitation but this was not considered in proper perspective. Finally, it is contended that the petitioner paid salary more than the minimum wage as per the material on record and prayed to set aside the order under challenge.

Per contra, learned counsel for the 2nd respondent supported the order under challenge on the ground that the petitioner is an industry manufacturing various items of electrical goods by using material and it is covered by G.O.Ms.No. 38. It is further contended that question of limitation including 5,110 days was already raised in the earlier Writ Petition but this Court did not interfere with the order in I.A.No. 1 of 1999 and, therefore, the order in W.P.No. 2506 of 2000 became final. In view of the issue raised before the 1st respondent and this Court, question of limitation need not be gone into again by this Court. Therefore, the contention of the petitioner that the claim of the 2nd respondent is barred by limitation is baseless and finally prayed to confirm the order passed under challenge.

Considering rival contentions and perusing material available on record including the order under challenge, the points that arise for consideration are as follows:

"(1) Whether the petitioner industry is a notified scheduled employment under Section 2 (g) read with Section 27 of the Act of 1948, if not, whether the 2nd respondent is entitled to claim any relief before the 1st respondent?

(2) Whether the claim of the 2nd respondent is barred by limitation?

(3) Whether the petitioner paid salary more than the minimum wage to the 2nd respondent, if so, whether the 2nd respondent is entitled to claim recovery of Rs.45,234.50 ps. from the petitioner?"

In Re. Point No. 1:

The first and foremost contention of the petitioner is that the petitioner industry is not covered by scheduled employment as defined under Section 2 (g) read with Section 27 of the Act of 1948 but the 1st respondent held that, in view of G.O.Ms.No. 38, the petitioner is engaged in scheduled employment and, therefore, governed by the provisions of the Act of 1948. The said finding is now under challenge before this Court. Before adverting to the G.O., I feel that it is better to advert to the definition of scheduled employment as defined under Section 2 (g) of the Act of 1948. According to Section 2 (g) of the Act of 1948, scheduled employment means an employment specified in the Schedule, or any process or branch of work forming part of such employment. Therefore, it is clear from the definition of scheduled employment under Section 2 (g) of the Act of 1948 that any employment included in the Schedule as notified by Government from time to time or work forming part of such employment. Section 27 of the Act of 1948 permits the appropriate Government, after giving by notification in the Official Gazette not less than three months' notice of its intention so to do, may, by like notification, add to either Part of the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act, and thereupon the Schedule shall in its application to the State be deemed to be amended accordingly. Part-I of the Schedule notified various employments as scheduled employments on various dates by Government. The petitioner industry is manufacturing electrical arrestors. Part-II deals with employment in agriculture and, therefore, it is not relevant for deciding the present controversy. The reason recorded by the 1st respondent to conclude that the petitioner industry is engaged in scheduled employment is G.O.Ms.No. 38, W.D.C.W. & L. dated 12-03-1993, published in A.P. Gazette, Part I, Ext., dated 20-05-1993. The G.O. relied upon by the 2nd respondent and accepted by the 1st respondent pertains to fixing minimum wage and cost of living allowance to be paid for point increase to highly skilled, skilled and semi skilled categories issued by exercising power under Section 5 read with Section 27 of the Act of 1948. . Thus, the G.O. relied upon by the 2nd respondent and accepted by the 1st respondent is unconcerned with scheduled employment under Section 2 (g) read with Section 27 of the Act of 1948. In the Note No. 1 under the said G.O., it is made clear that if any categories employed in the above employment are left out, they should not be paid less than the minimum wages fixed for a worker doing same or similar category of work in that employment.

The 2nd respondent is only a store assistant and he is shown at S.No. 6 in the office staff whose minimum salary is fixed at Rs.1,100/- p.m. However, this G.O. has no application to conclude that the petitioner industry is engaged in scheduled employment since an electrical industry is not notified under Section 27 of the Act of 1948. The 1st respondent at page No. 8 of the order concluded that the 2nd respondent was appointed as store assistant initially and, thereafter, there is no change in his employment. Hence, the 2nd respondent is entitled to claim minimum wage as per G.O.Ms.No. 38 but the date of

G.O. is not mentioned in the order anywhere. In any view of the matter, the 2nd respondent is entitled to minimum wage being store assistant as per G.O.Ms.No. 38 if his employment is scheduled employment as notified by Government from time to time under Section 27 of the Act of 1948 but here the petitioner industry is not a scheduled employment notified under Section 27 read with Section 2 (g) of the Act of 1948. Therefore, the conclusion of the 1st respondent that the 2nd respondent is entitled to claim minimum wage under the Act of 1948 is erroneous on the face of it. The 1st respondent did not record any finding whether the petitioner industry is engaged in any scheduled employment as notified under Section 27 of the Act of 1948.

According to Section 2 (e) of the Act of 1948, 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 this 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 sub-section (1) of Section 7 of the Factories Act, 1948 (63 of 1948)], as manager of the factory;*

(ii) *in any scheduled employment under the control of any Government in 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 the department;*

(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;*

(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;*

Thus, it is clear from the definition of employer that any person who supervises or controls employees or pays wages to employees engaged in any scheduled employment is an employer. The definition of employer is a restrictive definition. Only a person who employs one or more employees in any scheduled employment would be the employer within the meaning of the Act of 1948 and, no doubt, includes the employees as detained in various classes of Section 2 (e) of the Act of 1948. In view of the restricted meaning, only employer engaged in scheduled employment is governed by the provisions of the Act of 1948. If any employer not engaged in scheduled employment is not liable to pay minimum wages. Similarly, the word employee is defined under Section 2 (i) of the Act of 1948. According to it, employee means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Force of the [Union].

On close analysis of the definitions, the employee, who is working in an industry engaged in scheduled employment alone, is entitled to claim benefits under the Act of 1948.

Learned counsel for the 2nd respondent did not bring to my notice any notification issued by Government exercising power under Section 5 read with Section 27 of the Act of 1948 including the petitioner industry or an industry manufacturing electrical arrestors. In the absence of any notification under Section 2 (g) read with Section

27 of the Act of 1948, application of the provisions of the Act of 1948 does not arise.

The Apex Court, in ***Madhya Pradesh Mineral Industry Association Vs. The Regional Labour Commissioner, Jabalpur and others***[1], held that

> *"It is thus clear that the whole scheme of the Act is intended to work in regard to the employments specified in Part I and Part II of the Schedule and the Legislature has wisely left it to the appropriate government to decide to what employments the Act should be extended and in what areas. Section 5 (2) empowers the appropriate government to fix or revise minimum wages in regard to any of the employments in the Schedule to which the Act applies. This power can be exercised only if the employment in question is specified in the Schedule and the Act is therefore applicable to it. Section 27 confers a wider power on the appropriate government, and in exercise of the said power the appropriate government may add an employment to the Schedule."*

In ***M/s. Bhikusa Yamasa Kahatriya Vs. Sangamner Akola Taluka Bidi Kamgar Union***[2], the Supreme Court held that

> *"Conditions of labour vary in different industries and from locality to locality, and the expediency of fixing minimum wages, and the rates thereof depends largely upon diverse factors which in their very nature are variable and can properly be ascertained by the Government which is in charge of the administration of the State. It is to carry out effectively the purpose of this enactment that power has been given to the appropriate Government to decide, with reference to local conditions, whether it is desirable that minimum wages should be fixed in regard to any scheduled trade or industry, in any locality, and if it be deemed expedient to do so, the rates at which the wages should be fixed in respect of that industry in the locality."*

In ***Haryana Unrecognised Schools' Association Vs. State of Haryana***[3], the Apex Court held as follows:

> *"It explicitly clear that the State Government can add to either part of the Schedule any employment where persons are employed for hire or reward to do any work skilled or unskilled, manual or clerical."*

Though the above judgments discussed about power of the State to add or delete any employment to I or II schedule as scheduled employment by exercising power under Section 27 of the Act of 1948, none of the decisions directly held that the Act applicable though the employment is not notified. However, in ***A.Sundarambal Vs. Government of Goa, Daman & Diu***[4], the Apex Court categorically held that

> *"The Statute cannot be extended to those not intended to be covered by the Statute concerned. It was, however, noted that Section 27 enables the State Government to power to add to that part of the Schedule any employment in respect of which it is of the opinion that minimum rates of wages should be fixed under the Act."*

In view of the law declared by the Supreme Court, unless the employment is added to schedule I or II of scheduled employment as defined under Section 2 (g) of the Act of 1948, the provisions of the Act cannot be extended to such other employments.

In ***Lingegowd Detective and Security Chamber (P) Limited Vs. Mysore Kirloskar Limited and others***, the Apex Court clearly held that provisions of the Act of 1948 cannot be applied to the employment not notified either in part I or II of schedule as defined under Section 2 (g) of the Act of 1948. In the facts of the above judgment, the employee filed a petition before concerned authorities for payment of a sum of Rs.1,00,000/- as *ex gratia*. The learned single judge dismissed the petition on the ground that the employment is not a notified employment either in part I or II of schedule of the Act of 1948 but a Division Bench of the Karnataka High Court held that where a person provides labour or services to another for remuneration, which is less than the minimum wages, the labour or services provided by him fell within the scope and ambit of the words "forced labour" under Article 23 of the Constitution of India and, therefore, set aside the order passed by the learned single judge. Thereupon, the matter was carried in appeal to the Supreme Court. Upon considering the scope of provisions of the Act of 1948, the Apex Court in para No. 9 of the judgment held that

> *"The learned Single Judge was, therefore, justified in his view that the*

appellant Lingegowd had no liability to pay the minimum wages. The detective services do not form part of the scheduled employment as detained in the Schedule. It was also justified in holding that there was no employee-employer relationship so far as the appellant-Mysore Kirloskar and the concerned workmen are concerned."

In view of the law declared by the Apex Court, unless the employment of the petitioner is added to either part of schedule, the 2nd respondent is not entitled to claim benefits under the Act of 1948.

The 1st respondent, just applying G.O.Ms.No. 38, held that the 2nd respondent is entitled to claim minimum wages but the said G.O. pertains to fixing of salary or wage to various categories of employments and it is not a notification adding the industry of manufacturing electrical arrestors to either part of schedule by exercising power under Section 5 read with Section 27 of the Act of 1948. Therefore, the conclusion arrived by the 1st respondent basing on G.O.Ms.No. 38 is illegal and it is totally misplaced. In fact, the petitioner herein raised a specific contention that the provisions of the Act of 1948 have no application since the petitioner industry is not as scheduled employment but, instead of deciding the scope of Section 2 (g) read with Section 27 of the Act of 1948 to decide whether or not the petitioner industry is added to either part of scheduled employment, relied on G.O.Ms.No. 38, whereby wages and salaries of various employments are notified. Hence, the finding of the 1st respondent that the 2nd respondent is entitled to claim minimum wages for the period he worked in the petitioner industry is erroneous on the face of record.

Though learned counsel for the 2nd respondent contended that the petitioner industry is engaged in manufacturing process of electrical arrestors, it is allied industry in part I of schedule under Section 2 (g) read with Section 27 of the Act of 1948. A perusal of various employments in part I of schedule under Section 2 (g) read with Section 27 of the Act of 1948, the petitioner industry is not included by issuing any G.O. by Government exercising power under Section 27 of the Act of 1948. In the absence of notifying the petitioner industry as scheduled employment, the provisions of the Act of 1948 have no application. Learned counsel for the 2nd respondent did not bring to my notice any such notification which adds the petitioner industry, manufacturing electrical arrestors, in the scheduled employment by the State. Therefore, in the absence of any notification adding the petitioner industry to either part of schedule, direction issued to the petitioner by the 1st respondent for payment of dues of wages of Rs.45,234.50 ps. for the period from 28-11-1985 to 19-04-1997 is erroneous on the face of rercord. Hence, on this ground alone, the order of the 1st respondent is liable to be set aside. Accordingly, the point is held in favour of the petitioner and against the respondents.

In Re. Point Nos. 2 and 3:

Though the petitioner raised specific contentions that the claim of the 2nd respondent is barred by limitation and that the petitioner paid salary more than the minimum wage, these questions need no examination as the provisions of the Act of 1948 have no application to the petitioner industry since it is not notified either by State or Central Government by exercising power under Section 2 (g) read with Section 27 of the Act of 1948 and, as such, the petitioner industry is not a scheduled employment. Hence, no finding needs be recorded.

In view of my foregoing discussion, I find that the order passed by the 1st respondent in favour of the 2nd respondent is erroneous, the same is liable to be set aside and is, accordingly, set aside.

In the result, the Writ Petition is allowed setting aside the order dated 09-12-2000, passed by the 1st respondent, in M.W.No. 3 of 1998. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed in consequence. No order as to costs.

M.SATYANARAYANA

MURTHY, J.

Date: 12th February, 2016.
JSK

[1] (1960) IILLJ 254 SC

[2] (1962) IILLJ 736 SC

[3] (1996) IILLJ 639 SC

[4] (1989) ILLJ 61 SC