

HON'BLE SRI JUSTICE P.NAVEEN RAO

**WRIT PETITION Nos. 4123, 4125, 4127, 4128, 4129, 4130,
4134, 4150, 4181 of 2010, 12229, 12275, 12287, 12291,
12295, 12306, 12318 and 12324 of 2011**

Date: 20.09.2016

Between :

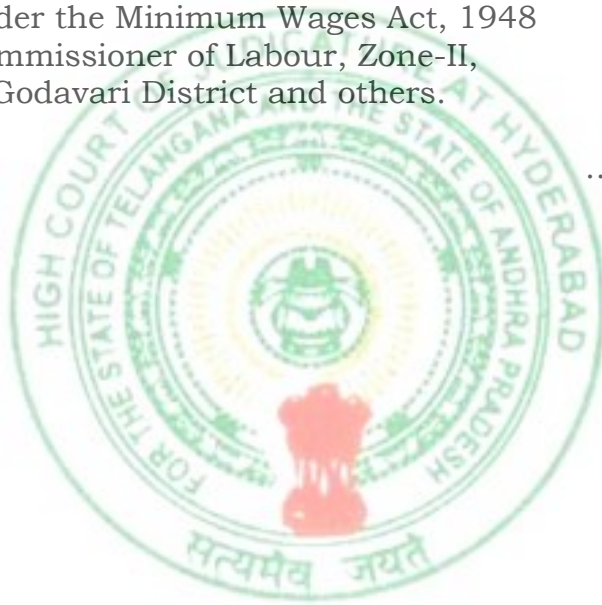
The A.P.Paper Mills Limited, Rajahmundry,
Rep.by its Sr.Vice-President (Corporate Affairs)
And Company Secretary, Mr. C.Prabhakar,
S/o. C. Krishna Murthy, Aged 53 years.

..... Petitioner

And

Authority under the Minimum Wages Act, 1948
and Joint Commissioner of Labour, Zone-II,
Eluru, West Godavari District and others.

..... Respondents



The Court made the following :

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION Nos. 4123, 4125, 4127, 4128, 4129, 4130, 4134, 4150, 4181 of 2010, 12229, 12275, 12287, 12291, 12295, 12306, 12318 and 12324 of 2011

COMMON ORDER:

In all these writ petitions, petitioners challenge registration of M.W.Case Nos. 10, 9, 6, 5, 11, 13, 12, 8, 7, 6, 7, 5, 11, 12, 13, 9 & 10 of 2010 by the Authority under the Minimum Wages Act, 1948 (for short 'the Act 1948') based on the complaint made by the Assistant Commissioner of Labour, Rajahmundry alleging non-payment of minimum wages as prescribed by the Government under the Act, 1948.

2. Heard Sri Vedula Srinivas, learned counsel for petitioners and learned Government Pleader for Labour (AP) for respondents 1 and 2.

3. For convenience sake the parties herein after referred to as arrayed before the Authority under the Act, 1948.

4. W.P.Nos.4123, 4125, 4127, 4128, 4129, 4130, 4134, 4150 and 4181 of 2010 are filed by the first opposite party (A.P.Paper Mills Ltd.,) and W.P.Nos.12229, 12275, 12287, 12291, 12295, 12306, 12318 and 12324 of 2011 are filed by the second opposite party, respective labour contractors who supplied labour to the first opposite party.

5. The common grievance of the opposite parties is against institution of proceedings under the Act, 1948 alleging that the

provisions of the Act, 1948 are not applicable to the opposite parties and therefore without jurisdiction and competence.

6. The case of the second opposite party is that they are registered as contractors under the Contract Labour (Regulation and Abolition) Act, 1970 (for short 'the Act, 1970) and the Rules made there under, in the combined State of Andhra Pradesh under A.P. Contract Labour (Regulation and Abolition) Rules, 1971 (for brevity 'the Rules 1971') and therefore, they are governed by the said provisions and the notifications issued under the Act, 1970 regarding payment of wages to the persons employed by them and they are not concerned with the wages determined for the first opposite party under the Act, 1948. It is their case that since the provisions of the Act, 1948 are not applicable to them, initiation of proceedings under the Act, 1948 is *ex-facie* illegal, without jurisdiction and competence.

7. The case of the first opposite party is that the first opposite party is one of the scheduled industries under the Act 1948, and minimum wages prescribed to the paper industry is duly complied to the persons employed by them directly and in fact far higher wages are paid than the minimum wages prescribed under the Act, 1948. For the workmen employed by the labour contractor and supplied to first opposite party, the wages as determined by the Act, 1970 are applicable and responsibility to pay appropriate wages to its employees' vests in the labour contractor. The first opposite party cannot be made liable by invoking the provisions of the Act, 1948 and therefore initiation of proceedings under the Act, 1948 is *ex-facie* illegal and without jurisdiction and competence.

8. As noticed above, the opposite parties challenged initiation of proceedings and issuing of notice to them under the Act, 1948 on the ground that the authority under the Act, 1948 is wholly incompetent to consider the issue of payment of appropriate wages to the workmen engaged by the 2nd opposite party and supplied to the first opposite party. It is also contended that in so far as the second opposite party in W.P.No.12287 of 2011 is concerned, the allegation made is that the wages as prescribed in G.O.Ms.No.34 dated 26.05.2008 are not paid. These wages are applicable to Wood working establishments including wooden furniture but excluding timber operations. In all other writ petitions instituted by the second opposite party, the allegation is that the wages as prescribed in G.O.Ms.No.88 dated 28.09.2007 is sought to be applied. Whereas the wages prescribed therein are applicable to Metal Foundries and General Engineering Industries and, therefore, the same is not applicable to paper mill industry and to employees engaged by labour contractor.

9. As noticed above the writ petitions are instituted at the stage of initiation of proceedings under the Act, 1948 and issuance of notice for conducting enquiry into the allegation of non-payment of appropriate wages to the workmen employed in the first opposite party as per orders of government fixing minimum wages under the Act, 1948.

10. Ordinarily, writ petitions are not entertained at the stage of notice for enquiry, more so, when such notices are issued by quasi-judicial authority deriving its power, in the instant case, under the Act, 1948. Thus the issue for consideration is whether

initiation of proceedings under the Act, 1948 is without jurisdiction and competence, thereby vitiating the proceedings?

11. With reference to the claim of the first opposite party Sri Vedula Srinivas made the following submissions:

11.1. So far as the paper mill is concerned it is also a scheduled industry and therefore, the provisions of the Act, 1948 are applicable. Separate notification was issued fixing the minimum wages with reference to the employees working in paper industry. The same is complied and in fact far higher wages are paid to all employees employed directly by the first opposite party and there is no violation on that issue and no such allegation is made. Whereas in the complaint reliance is placed on the wages determined for Metal Foundries and General Engineering Industry and Wood Working industry which are not applicable.

11.2. It is further contended that a similar issue has come up for consideration in W.P.No.19179 of 1997 and two other writ petitions. The petitioner there in is the first opposite party herein. The Petitioner was aggrieved by initiation of proceedings under the Payment of Wages Act, holding the first opposite party as a principal employer and directing payment of wages as determined under the said Act, to the employees employed in the first opposite party supplied by the labour contractor. Following the decision of the Hon'ble Supreme Court in ***Hindustan Steel Works Constructions Ltd., Vs Commissioner of Labour and others***¹, this Court held that the first opposite party cannot be made liable to pay the wages by applying the provisions of Payment of Wages

¹ (1996) 10 Supreme Court Cases 599

Act to the workmen supplied by the labour contractor. He would submit that the same principle would apply to the case on hand.

11.3. Minimum Wages Act does not recognize the relationship of principal employer and contract employee and, therefore, provisions of the Act, 1948 are not attracted when employees worked in the first opposite party are the actual employees of labour contractor.

12. With reference to the claim of the second opposite party Sri Vedula Srinivas made the following submissions:

12.1. He would submit that the labour contractors are bound by the provisions of the Act, 1970 and the wages as determined by the Commissioner there under are strictly applied. He would submit that the Commissioner of Labour issued Gazette notification, published on 18.08.2009, fixing the minimum wages payable to the workmen and these wages are strictly applied by the second opposite party.

12.2. The labour contractors are not classified as scheduled industry and the provisions of the Act, 1948 are applicable only to the scheduled industries and not otherwise.

13.1. In support of his contention, he placed reliance on a decision reported in ***Lingegowd Detective & Security Chamber (P) Ltd., Bangalore Vs Authority under the Minimum Wages Act (Small Causes Court), Nagpur***² and the decision of the single judge of Karnataka High Court as affirmed by the Supreme Court.

² LAWS (KAR)-1997-9-85

13.2. Based on these submissions, Mr Srinivas contended that the proceedings under the Act, 1948 are not maintainable and are liable to be set aside.

14.1. Learned Assistant Government Pleader placing reliance on the counter averments deposed by the Assistant Commissioner of Labour would submit that as against employment of more than 3000, almost 1/3rd of employees are engaged through the labour contractors and thereby virtually circumventing the provisions of the Act, 1948. But for this illegal method adopted by the first opposite party all the employees employed by the first opposite party would have got far higher wages. The impugned proceedings were initiated only to unearth this illegality and to ensure that proper wages are paid to the workmen.

14.2. She would further submit that the laborers supplied by the contractor are only involved in the work of fabrication in the first opposite party premises. The said fabrication work is a scheduled employment in the nature of General Engineering and therefore is covered by G.O.Ms.No.88 dated 28.09.2007. Thus, all those workers involved in fabrication job have to be paid wages as determined by G.O.Ms.No.88. She would therefore submit that the proceedings were validly initiated and there was no jurisdictional error warranting interference by this Court at the threshold.

15. The proceedings initiated against the opposite parties, proceed on the presumption that the first opposite party is the principal employer and therefore, workmen employed through the labour contractor have to be treated as employees of first opposite

party and therefore the first opposite party has to pay wages as applicable to the scheduled industry under the Act, 1948.

16. The fallacy in the said argument is, it ignores the prescription of minimum wages to the paper industry by separate notification and the two GOs which were pressed into service to raise complaints against opposite parties are for different industries. It is the categorical assertion of the first opposite party that minimum wages as prescribed to paper industry under the Act, 1948 are complied and paid to all the workmen engaged directly by the first opposite party. The controversy is with reference to workmen employed through 2nd opposite party.

17. When similar issue has come up for consideration with reference to application of provisions of the Act 1970, vis-à-vis, the provisions of Payment of Wages Act in the writ petitions instituted by the first opposite party, this Court, following the decision of Supreme Court in **Hindustan Steel Works** held that the provisions of Payment of Wages Act are not attracted to the workmen engaged through the labour contractor.

18. In **Hindustan Steel Works** the Supreme Court considered the scope of provisions of the Act, 1970 and the Rules 1971. It was held that the labour contractors are governed by the provisions of Act, 1970 and therefore, the comparison has to be with reference to wages as prescribed under the Act, 1970. If there is any deficiency in payment of wages contrary to what was fixed, the labour contractor would be responsible, but no liability can be fixed on the principal employer. With reference to payment of appropriate wages by the labour contractor to his employees,

however, the Supreme Court observed that if there is any difference between the wages contracted under the agreement and lesser wages are paid by the contractor to the workmen, the differential amount should be paid by the principal employer and recovered from the labour contractor. Except to this extent of liability on the principal employer, no liability can be fixed on the principal employer. The same principle would apply here under.

19.1. In the case before Karnataka High Court the labour contractor was providing security services. The industry was one of the notified scheduled industries and therefore, the industry was governed by the provisions of the Act, 1948. Proceedings were initiated under the Act, 1948 holding that the employees provided by the labour contractor to render security service in the industry are to be paid minimum wages as prescribed to the scheduled industry and therefore, payment of wages to workmen engaged by the contractor was in violation of the Act, 1948.

19.2. The learned Single Judge of the Karnataka High Court posed the following question for consideration :

“Now, the question that will arise for consideration is, whether the principal employer can be asked to pay the minimum wages as if detective agency is an Engineering industry. There appears to be some fallacy in the logic that when a detective service employee works in the Engineering Industry, the management would be required to pay the minimum wages in the Engineering Industry and the same detective if he is posted elsewhere, for example, on private duty, he would not be entitled to minimum wages.”

19.3. Learned Single Judge held that there is obviously no employer and employee relationship between the principal employer and the security staff who work under the contractor.

Learned Single Judge was pleased to hold that the proceedings under the Act, 1948 are not maintainable.

19.4. However, on appeal, the Division Bench reversed the said decision. The matter was carried in appeal to the Supreme Court. The Supreme Court reversed the decision of the Division Bench and while upholding the decision of the Single Judge, held as under :

“In this case, it was 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.

“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 detailed 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 workmen concerned are concerned. The Division Bench unfortunately did not address itself to the relevant aspects and referred to the decision in People’s Union for Democratic Rights Vs Union of India [(1982) 3 SCC 235] which was rendered on a totally different context.”

20. In the instant case also, the second opposite party is governed by the Act, 1970. It is not in dispute that as per the notification issued by the Commissioner of Labour, revised minimum wages from time to time are being paid to the workmen engaged by Labour contractors. Thus, the only dispute is with reference to application of the provisions of the Act, 1948 and treating the first opposite party as a principal employer.

21. In view of the decisions of the Supreme Court in **Hindustan Steel works** and **Lingegowd**, I am of the opinion that the provisions of the Act, 1948 cannot be applied to labour contractors to the employees engaged by the labour contractors and supplied to the first opposite party. It is also appropriate to notice that there was total non-application of mind on the part of the complainant in seeking to apply the two Government G.Os, i.e., G.O.Ms.No.34 dated 26.05.2008 and G.O.Ms.No.88 dated 28.09.2007. These two G.Os, are not applicable to paper mill industry and separate orders were issued fixing minimum wages to the employees engaged by the paper industry. It is not the case of the complainant that the orders issued to paper industry are violated. No explanation is forthcoming in the counter, except to say that the employees supplied by the second opposite party are executing the work of fabrication.

22. For all the aforesaid reasons the proceedings initiated under the Act, 1948 are not sustainable. The provisions of the Act, 1948 are not applicable to workmen employed by the second opposite party and supplied to first opposite party. The complainant is wholly incompetent and has no jurisdiction to complain violations of the provisions of the Act, 1948 to the opposite parties. Since the complaint is not maintainable, the proceedings initiated by the Authority under the Act, 1948 are *ex-facie* illegal and without jurisdiction and they are liable to be set aside and are accordingly set aside.

23. Accordingly the Writ Petitions are allowed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in these writ petitions, shall stand closed.

20th September, 2016
Rds

P.NAVEEN RAO,J



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