THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL MISCELLANEOUS APPEAL No.465 OF 2007

JUDGMENT:

Aggrieved by the award passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Khammam (hereinafter will be referred to as 'Commissioner') in W.C.Case No.3 of 2004, awarding Rs.2,56,003/- to the claimants/parents of the deceased workman, the opposite party in the said case preferred the present civil miscellaneous appeal under Section 30 of the Workmen's Compensation Act.

For convenience of reference, the parties to the civil miscellaneous appeal will be referred to as applicants and respondent, as arrayed in W.C.Case No.3 of 2004.

The facts of the present case are that one M. VEnkateswarlu, while working at the Secondary Double Role Crusher's welding work in the Dolomite Mine of the appellant/respondent Steel Plant at Mahdaram suddenly fell in the crusher and died on spot. Thereby, the parents of the deceased workman filed W.C.Case No.3 of 2004 under the provisions of the Workmen's Compensation Act, 1923 (for short referred to as 'Act'), claiming compensation of Rs.4,13,851/- for the untimely death of their son. The respondent/ Steel Plant paid a sum of Rs.1,63,406.78 ps towards its liability in terms of the Act by taking into consideration the minimum wage applicable to the deceased employee as Rs.56.44 ps in terms of notification No.1(9)/2002-L.S.II dated 08.10.2002 issued by the Chief Labour Commissioner (Central), Ministry of Labour, Government of India, New Delhi. Dissatisfied with the quantum of compensation paid by the Steel Plant, the parents of the deceased approached the Commissioner.

It is contended by the respondent before the Commissioner that it is liable to pay only the minimum wage which is payable to the Central Government employees as defined under Section 2(b) read with Section 3 of the Act and notified, the compensation has to be determined accordingly, it is also submitted that, in fact they paid the compensation of Rs.1,63,406/- to the applicants for death of workman by calculating the compensation based on the minimum wage as notified by the Chief Commissioner of Labour (Central) on 08.10.2002 and prayed for dismissal of the petition.

During enquiry, on behalf of the applicants P.Ws 1 & 2 were examined and Exs.A-1 to A-4 were marked. None were examined and no documents were marked on behalf of the appellant/respondent before the Commissioner.

Basing on the material available on record, more particularly, the agreement between the respondent and the workman, the Commissioner awarded Rs.2,56,003/-. Aggrieved by the order passed by the Commissioner, the present civil miscellaneous appeal is filed raising several contentions, one of the contention urged is that, the workman who is working in the Central government undertaking is entitled to minimum wage and in terms of Section 2(b) & Section 3 of the Minimum Wages Act and in terms of Section 2(g) & Section 27, Central Government is the appropriate government for fixing minimum wages for employees in relation to the dolomite mine. Accordingly Notification No.1(9)/2002-L.S.II dated 08.10.2002 was issued by the Chief Labour Commissioner (Central), Ministry of Labour, fixing the minimum wages for workmen employed in the mine and the same is applicable to the present case. But, this notification was not considered by the Commissioner and as per the wage agreed to be paid under the agreement, compensation of Rs.2,56,003/- was awarded to the workman.

Learned counsel Sri K. Ravinder Rao appearing for the petitioner/respondent would contend that the deceased workman is entitled to wage on par with the employees, working in the mines, which shall be notified by the Central Government from time to time and the same alone is applicable, but not the wage agreed to be paid under the agreement between the parties, in view of Section 2(b) and Section 3 of the Minimum Wages Act. Even if there is an agreement for payment of higher wage by such contract, it is against public policy and on the strength of such contract, the claimants are not entitled to claim compensation.

In support of the contentions, learned counsel for the appellant/respondent drawn the attention of this Court to several judgments of the Supreme Court and placed reliance on **Nagendrappa Natikar v. Neelamma**[1], **Steel Authority of India Ltd. and others v. National Union Water Front Workers and others etc.**[2] and **A.V.M. Sales Corporation v. Anuradha Chemicals Private Limited**[3]**.**

Per contra, Sri K. Rathangapani Reddy, learned counsel for the respondents/applicants would submit that the compensation has to be calculated under the Act based on the award and not based on the minimum wage under Section 4 of the Workmen's Compensation Act, 1923. Therefore, the contention of the learned counsel is contrary to Section 4 of the Act and the provisions of the Minimum Wages Act only obligates the industry to pay minimum wage and that there is no prohibition for payment of wage more than the minimum wage. Therefore, the minimum wage is not alone is to be considered for assessment of compensation to the claimants for the death of workman, placed reliance on the judgment of the Apex Court in **The Kamani Metals and Alloys Ltd v. The Workmen**[4].

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

1. **Whether the wage agreed to be paid is higher than the minimum wage as per the agreement between the workman and employer is against the public policy and hit by Section 23 of Indian Contract Act, to disable dependants of the deceased workman to claim compensation?**

2. **Whether compensation can be assessed under Section 4 of the Workmen's Compensation Act only taking into consideration the minimum wage. If so, whether the order under challenge passed by the Commissioner in W.C.Case No.3 of 2004 be sustained.?**

Point No.1

The appellant/respondent is a central government undertaking entered into an agreement with the employee for undertaking work on payment of wage to the workmen and agreed to pay minimum wage as per Clause 33 of the Special Conditions of Contract which is extracted as follows:

> "Wages paid to the workmen by the contractor should not be less than the *rates notified by the Commissioner of Labour, Andhra Pradesh, Hyderabad published in the Andhra Pradesh Gazette* from time to time with regard to the minimum wages applicable to the respective category of workmen. Wages to the workmen should be paid on or before the 7th of the subsequent month. If 7th falls on a holiday or weekly-off day, the payment should be made one day prior to that. Payment of PF for the month, both the employer's (in this case contractor) and employee's (in this case workmen employed by the contractor) contributions should be deposited in the bank in the permanent PF code numbers and challan obtained before the 15th of the subsequent month and forwarded to the "Engineer""

Further, the action to be taken against the persons who violated the above condition i.e. payment of wage, less than the minimum wage fixed in Clause 33 was specified in Clause 33 itself.

On a careful perusal of the agreement, what emerges is, it is for the contractor to pay the amount to the workman as annexed to the instructions of tender for mining of dolomite. Further, it is evident that tenders were called for mining in the prescribed proforma and also fixed the closing date and time of tenders as 19.07.2005 before 03.00 P.M annexing Special Conditions of Contract. In view of the Special Conditions of Contract, the wage payable to the workman engaged in dolomite mine shall not be less than the wage notified by the Commissioner of Labour, Andhra Pradesh, Hyderabad.

The main endeavour of the learned counsel appearing for the opposite party is that, in terms of Section 2(b) read with Section 3 of the Minimum Wages Act, 1948, the minimum wage applicable to the workers engaged in the Central government or its undertakings shall be the wage notified by the State Government. Section 2(b) defined the term “appropriate Government”.

(i) in relation to any scheduled employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a mine, oilfield or major port, or any corporation established by the Central Government, and

(ii) in relation to any other scheduled employment, the State Government.

Thus mining operation is within the purview of Central Government and the wage payable to the workmen in mining shall be notified by the Chief (Central) Labour Commissioner under Section 3 of the Act. According to Section 3 of the Minimum Wages Act, the appropriate Government shall fix minimum rates of wages payable to the employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under Section 27; provided that the appropriate Government may, in respect of employees employed in an employment specified in Part II of the Schedule, instead of fixing minimum rates of wages under this clause for the whole State, fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof.

A combined reading of Section 2(b) read with Section 3 signifies that, it is for the Central Government to fix wage for the workman employed in mining operations. But, as a special contract was entered into fixing the terms and conditions of tender for mining operations, therefore, the minimum wage notified by the Central Government was not agreed to be payable to the workman employed in mining operations. Therefore, the terms in special condition of tender regarding payment of wage is not in consonance with Section 2(b) read with Section 3 of Minimum Wages Act, 1948. Further, learned counsel would mainly contend that the wage notified by the Central Government alone is applicable to the workman working in the mining industry, but not the wage notified by the Commissioner of Labour, Hyderabad and thereby the claimants are entitled for less compensation.

Section 2 Clause (h) of the Minimum Wages Act defined the term "Wages" as

> "all remuneration, capable of being expressed in terms of money which would, if the 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 employment and includes house rent allowance, but does not include-- (i) the value of (a) any house accommodation, supply of light, water, medical attendance, or (b) any other amenity or any service excluded by general or special order of the appropriate Government; (ii) any contribution paid by the employer to any

> Pension Fund or Provident Fund or under any Scheme of social insurance; (iii) any travelling allowance or the value of any travelling concession; (iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or (v) any gratuity payable on discharge."

Therefore, the term 'wage' includes the remuneration capable of being paid in terms of money, which would, if the terms of the contract of employment is agreed to be paid to the person employed. The word "Contract of Employment" assumes importance in this connection.

In view of the terms and conditions of tender, the wage payable to the workman is wage notified by the Commissioner of Labour, Hyderabad, Andhra Pradesh. Therefore, by special terms and conditions of contract, the wage agreed alone was payable to the workman, though it is higher than the wage notified by the Chief Commissioner of Labour (Central). When parties have agreed to pay particular amount of wage, it would fall within the ambit of Section 2(h) of the Minimum Wages Act, which defined the term 'wage'.

It is also contended that the wage payable to the workman engaged in dolomite mining shall not be higher than the minimum wage payable to a workman in contract for payment of higher wage than the minimum wage is in violation of the provisions of Minimum Wages Act.

Learned counsel appearing on behalf of the opposite party/Steel Plant in support of his contention places reliance on **A.V.M. Sales Corporation's** case (referred supra) where the Apex Court in paragraph 10 and 17 held that, basically what Section 28 read with Section 23 of Indian Contract Act does make it very clear that if any mutual agreement is intended to restrict or extinguish the right of a party from enforcing his/her right under or in respect of a contract, by the usual legal proceedings in the ordinary tribunals, such an agreement would to that extent be void. In other words, parties cannot contract against a statute.

Learned counsel also drew attention of this Court to the Judgment of the Supreme Court in **Nagendrappa Natikar's** case. In the facts of the above judgment, an agreement was entered into for payment of maintenance by the husband to the wife, whereunder, he agreed for payment of Rs.8,000/- towards permanent alimony with a condition that she shall not make any claim for maintenance in future or enhancement of maintenance and when the issue came up for consideration, the Apex Court in paragraph 10 of its judgment held that Section 125 of Cr.P.C is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children. Section 125 is not intended to provide for a full and final determination of the status and personal rights of the parties, which is in the nature of a civil proceeding, though governed by the provisions of CrPC and the order made under Section 125 CrPC is tentative and is subject to final determination of the rights in a civil court. The Apex Court in paragraph 11 further spelt out that Section 25 of the Contract Act provides that any agreement which is opposed to public policy is not enforceable in a court of law and such an agreement is void, since the object is unlawful. The proceeding under Section 125 CrPC is summary in nature and intended to provide a speedy remedy to the wife and any order passed under Section 125 CrPC by compromise or otherwise cannot foreclose the remedy available to a wife under Section 18(2) of the Act.

Learned counsel has also further drawn attention of this Court to the judgment in **Steel Authority of India Ltd** case (referred supra), wherein, the Supreme Court held that, in interpreting a beneficial legislation enacted to give effect to directive principles of the State policy which is otherwise constitutionally valid, the consideration of the

Court cannot be divorced from those objectives. In a case of ambiguity in the language of a beneficial labour legislation, the Courts have to resolve quandary in favour of conferment of, rather than denial of, a benefit on the labour by the legislature but without rewriting and/or doing violence to the provisions of the enactment.

At best, the principles laid down by the Apex Court may be useful to declare that the special terms of contract of employment are in contravention to Section 2(b) read with Section 3 of the Minimum Wages Act.

In the present case, the applicants are not claiming any such relief to declare that the special terms and conditions of tender as not valid. As long as the terms and conditions of employment by way of special terms and conditions of tender is not set-aside, this Court has no option except to accept that the wage payable to the workman is in terms and conditions of Clause No.33 of special conditions of tender i.e. the wage notified by the Commissioner of Labour, Hyderabad, Andhra Pradesh, though, wage payable to the workman in dolomite mine under Schedule I & II for which the Chief Central Commissioner of Labour has to issue notification.

Labour laws are the welfare legislations and the opposite parties agree to pay certain wages as agreed by mutual agreement, though it is against any statute, such benefit shall be extended to the workman and not to the employer. Therefore, the benefit has to be extended to the workman only, though the wage agreed to be paid is more than the wage payable to the workman in pursuance of the notification issued by the Chief Central Labour Commissioner. As long as the concluded contract is in force, the parties to the contract are bound to adhere the terms contained therein and wage payable to the workman is the only wage agreed under the terms and conditions of contract of employment. Therefore, while deciding the compensation payable for the dependants of the workman, such agreement for payment of wage as agreed under the special terms and conditions of tender and it cannot be held to be void, as it is contrary to the provisions of Minimum Wages Act, since, the scope of the present civil miscellaneous appeal is limited. Accordingly, the point is answered.

POINT NO.2

The applicants being the parents of the deceased workman claimed total compensation of Rs.4,13,851/-, basing on the wage agreed to be paid to the workman under the special terms and conditions of tender. Section 4 deals with the assessment of the compensation for the purpose of deciding a real controversy which deals with the case of death for assessment of compensation in case where death resulted from the injury. The basis for fixing of compensation is an amount equivalent to 50% of the monthly wages of the deceased workman multiplied by the relevant factor or an amount of Rs.50,000/-, whichever is more. Thus, it is clear from Section 4(1)(a), the basis for fixing compensation is monthly wage. The term “Wage” is defined in Section 2(m) of the Workmen’s Compensation Act, 1923, which reads as follows:

> *“‘wage’ includes any privilege or benefit which is capable of being estimated in money, other than a traveling allowance or the value of any traveling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment”*

The definition of ‘Wage’ under Section 2(m) of the Workmen’s Compensation Act, 1923 and the definition of ‘Wage’ under Section 2(h) of the Minimum Wages Act, 1948, includes the wage agreed to be paid under the contract of employment. Here, as per the special terms and conditions of the tender, the wage payable for the workman is only the wage notified by the Chief Commissioner of Labour, Hyderabad, Andhra Pradesh. The Commissioner for Workmen's Compensation Act cum Assistant Commissioner of Labour, took the agreed wage under the special terms and conditions of tender, as notified by the Commissioner of Labour and awarded compensation to the petitioners.

Learned counsel for the appellant/respondent contended that the minimum wage is only the wage which is required to be paid in terms of the Minimum Wages Act, compensation shall be calculated based on minimum wages. There is no prohibition for payment of wage higher than the minimum wage and drawn the attention of this Court to the Full Bench Judgment of the Supreme Court in **The Kamani Metals and Alloys Ltd** case to contend that the wage agreed to be paid under the contract of employment alone be taken . The Apex Court while dealing with the issue of fixation of wage structure, principles involved therein and also Industrial Disputes Act, held as follows:

> "7. Fixation of a wage-structure is always a delicate task because a balance has to be struck between the demands of social justice which requires that the workmen should receive their proper share of the national income which they help to produce with a view to improving their standard of living, and the depletion which every increase in wages makes in the profits as this tends to divert capital from industry into other channels thought to be more profitable. The task is not rendered any the easier because conditions vary from region to region, industry to industry and establishment to establishment. To cope with these differences certain principles on which wages are fixed have been stated from time to time by this Court. Broadly speaking the first principle is that there is a minimum wage which, in any event, must be paid, irrespective of the extent of profits, the financial condition of the establishment or the availability of workmen on lower wages. This minimum wage is independent of the kind of industry and applies to all alike big or small. It sets the lowest

> limit below which wages cannot be allowed to sink in all humanity. The second principle is that wages must be fair, that is to say, sufficiently high to provide a standard family with food, shelter, clothing, medical care and education of children appropriate to the workman but not at a rate exceeding his wage earning capacity in the class of establishment to which he belongs. A fair wage is thus related to the earning capacity and the workload. It must, however, be realised that 'fair wage' is not 'living wage' by which is meant a wage which is sufficient to provide not only the essentials above-mentioned but a fair measure of frugal comfort with an ability to provide for old age and evil days. Fair wage lies between the minimum wage, which must be paid in any event, and the living wage, which is the goal. As time passes and prices rise, even the fair wage fixed for the time being tends to sag downwards and than a revision is necessary. To a certain extent the disparity is made up by the additional payment of dearness allowance. This allowance is given to compensate for the rise in the cost of living. But as it is not advisable to have a 100% neutralisation lest it lead to inflation, the dearness allowance is often a little less than 100% neutralisation. In course of time even the addition of the dearness allowance does not sufficiently make up the gap between wages and cost of living and a revision of wages and/or dearness allowance then becomes necessary. This revision is done on certain principles."

In view of the principle laid down in the above judgment, fair wage earning is based on an individual and the wages have to be fixed basing on the price rise etcetera, in addition to the object of the enactment.

In any view of the matter, the wage agreed to be paid by the employer to the employee is the wage under contract of employment, in view of the special terms and conditions of tender. Therefore, the wage agreed to be paid and the assessment of compensation awarded by the Commissioner of Workmen’s Compensation Act is in accordance with law. Accordingly, the point is answered against the appellant/respondent/Steel Plant and in favour of the respondents/applicants.

In view of my findings in point nos.1 & 2, I find no illegality in the order passed by the Commissioner for Workmen's Compensation Act in assessment of compensation, since the Commissioner took the wage agreed to be paid under the contract of employment, but not the minimum wage. Since there is no prohibition for payment of wage higher than the minimum wage, the order is not in violation of any statute or provision or rule. Consequently, the award passed by the Commissioner of Workmen's Compensation Act and Assistant Labour Commissioner in W.C.Case No.3 of 2004, accordingly the award is upheld.

In the result the civil miscellaneous appeal is dismissed, but however without costs.

Consequently miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Dated 09.08.2016
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[1] (2014) 14 Supreme Court Cases 452

[2] AIR 2001 SUPREME COURT 3527(1)

[3] (2012) 2 Supreme Court Cases 315

[4] AIR 1967 SUPREME COURT 1175