

\$~53

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 7517/2017**

RESIDENTS WELFARE ASSOCIATION THR PRESIDENT

..... Petitioner

Through: Mr.Manoj K. Mishra and Mr.Umesh
Dubey, Advocates

versus

RAKESH KUMAR

..... Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **28.08.2017**

CM No.31000 and 31002/2017 (for exemption)

Exemption allowed, subject to just exceptions.

W.P.(C)7517/2017 and CM No.31001/2017 (for stay)

1. Initial submissions made on behalf of the petitioner.
2. Along with the petition is a CM No.31001/2017, is an application filed on behalf of the petitioner seeking stay of the operation of the impugned order/proceedings dated 12.7.2017 passed by the Competent Authority under the Minimum Wages Act, 1948, New Delhi in relation to the impugned order dated 12.7.017 passed in MW-21/SWD/17/2556.
3. Vide the present petition, the petitioner has assailed the impugned order dated 12.7.2017 whereby it has been observed to the effect :

“12.07.2017

*For Petitioner: Sh. Piyush Kumar Sharma, AR
along with claimants present.*

*For Respondent: Sh. Umesh Dubey, Advocate
present.*

The Respondent has failed to produce any record in r/o payment of wages to the claimant w/m. Since matter has been delayed due to non-compliance of previous order, a cost of Rs.1,000/- each is imposed and another opportunity is given for producing the wages register and other statutory record. The Respondent is also directed to file bank statement for the period of claim and thereafter. Fixed for 30.08.17 at 11.00 a.m. President, General Secretary and Treasurer to appear in person.”

4. The genesis of the proceedings before the Competent Authority under the Minimum Wages Act, 1948 appears to be a notice dated 27.3.2017 issued by the said Authority as the workman moved an application under the Minimum Wages Act, 1948. The contention of the workman *inter alia* was to the effect that the minimum wages had not been paid in relation to which the notice dated 27.3.2017 was issued by the Competent Authority under the Minimum Wages Act, 1948 calling upon the respondent, i.e., the present petitioner herein to produce on 8.5.2017 all the witnesses upon whose evidence and all the documents upon which the respondent, i.e., the present petitioner herein, intended to reply in support of its defence. Furthermore, the respondent, i.e., the present petitioner herein, was directed to appear in person or through its authorized representative along with the two copies of their reply on the date 8.5.2017 at 11 a.m. observing further

to the effect that in the event of their failure to appear on the date fixed, i.e., 8.5.2017, the application would be heard *ex parte* and further action would be initiated against them as per the provisions of the Minimum Wages Act, 1948.

5. The contents of the said notice dated 27.3.2017 are to the effect:

“Whereas, Sh. Vijay Kumar workman/dependent of the workman have moved an application in this court under the Minimum Wages Act, 1948. You are hereby summoned to appear before me in person or by a duly authorised agent, along with two copies of your reply on 08th day of May 2017 at 11:00 A.M, to answer the claim. You must be prepared to produce on that day all the witnesses upon whose evidence and all the documents upon which you intend to rely in support of your defence. Take notice that in case you fail to appear on the above mentioned date and time the application may be heard ex-parte and further action would be initiated as per the provisions of the Minimum Wages Act, 1948.”

6. The proceedings before the Competent Authority under the Minimum Wages Act, 1948, New Delhi dated 8.5.2017 are reflected on record to the effect:

“8.5.2017

*For Petitioner: Sh. P.K.Sharma, AR(W)
present.*

*For Resondent: Sh. Umesh Dubey,
Advocate present.*

Vakalatnama filed. Copy of claim supplied to respondent. Matter adjourned for filing WS. Respondent to appear in person along with WS

and statutory record. NDOH fixed for 12.7.17 at 11:00 a.m.”

7. Vide proceedings dated 8.5.2017 it is indicated categorically that the copy of the claim was supplied to the respondent, i.e., the Residents Welfare Association, i.e., the present Petitioner and the matter was adjourned for filing written statement and the respondent, i.e., the present petitioner was directed to appear in person along with the written statement and the statutory record on the next date of hearing i.e., 12.7.2017 at 11:00 a.m.

8. This proceeding dated 12.7.2017 of the Competent Authority under the Minimum Wages Act, 1948, New Delhi, already recorded herein above indicates to the effect that the respondent, i.e., the present petitioner had failed to produce any record in relation to the payment of the wages of the workmen and since the matter had been delayed due to non-compliance of the previous order, a cost of Rs.1,000/- was imposed and another opportunity was given to the Residents Welfare Association, i.e., the petitioner herein to produce their wages register and other statutory record and the respondent, i.e., the present petitioner was also directed to produce the bank statement for the period of claim and further more the matter had been fixed for 30.8.2017 at 11:00 a.m. and the said Authority even directed the President, General Secretary and Treasurer to appear in person.

9. The contention of the petitioner that the representative of the petitioner was present on the date 12.7.2017 with the written statement which was not taken on record by the Competent Authority

in terms of Section 114 (e) of the Indian Evidence Act, 1872 which necessitates drawing of a presumption to the effect that all judicial and official acts are done in accordance with law, thus cannot be accepted.

10. In the circumstances, it is not considered appropriate to issue any notice of the petition to the respondent.

11. However, the Competent Authority under the Minimum Wages Act, 1948, New Delhi shall take on record the written statement of the petitioner, which the petitioner shall submit on 30.8.2017 at 11 a.m. before the Competent Authority under the Minimum Wages Act, 1948, Government of NCT, Delhi and the proceedings before the Competent Authority, Minimum Wages Act, shall take into account the submissions made in the said written statement.

12. With these observations, the petition is disposed of.

Dasti, as prayed.

ANU MALHOTRA, J

AUGUST 28, 2017/sv