

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved for Orders on :14.09.2018****Order passed on : 10/12/2018****CRREF No. 1 of 2017**

- In Reference (for fixation of equitable wages for convicted prisoners in jail)

Versus

- State of Chhattisgarh

-----Respondent

in connection with Jyoti Banjare and another Vs. Anush Banjare, Misc. Criminal Case No.24/2017, Family Court, Mahasamund

Appearance:-

Smt. Fouzia Mirza, Advocate as Amicus curiae.

Shri Anupam Dubey, Deputy Govt. Advocate for the State.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

10-12-2018

1. A reference has been made by the Judge, Family Court Mahasamund putting forth a question as under:-

“Whether fixation of wages for the prisoners in jail, who are supposed to pay maintenance, below the minimum wages prescribed under the Minimum Wages Act, 1948, is proper?”

2. The facts of the case on the basis of which this question has been referred to are these, that by order passed by the concerned Court in Misc. Criminal Case No.24/2017, the non-applicant Anush Banjare was ordered to pay the maintenance of Rs.2500/- to his wife Jyoti Banjare and minor child Ajay, as he did not pay the maintenance as ordered, an application under Section 125(3) of the Cr.P.C. was filed. After discussing the other manners in which the amount of maintenance can be realized under the provisions of law, it was observed in the order dated 08-06-2017 by the learned Court below, that the provisions of detention as provided under Section 125(3) of the Cr.P.C. serves no purpose as if the non-applicant/husband is ordered to undergo R.I. for 1 month as provided under the Act, the remuneration for the labour work in

jail is not sufficient to make the payment as ordered by the Court. Referring to the Judgment of Single Bench Calcutta High Court, Moddari Bin Vs. Skdeo Bin, AIR 1967 CALCUTTA 136, that the order of imprisonment as provided under the provisions of Section 488(3) of the Cr.P.C. coheres with the Section 125(3) of the Cr.P.C., 1973 and that the imprisonment in default for payment of maintenance can be rigorous as well as simple. Reference is also made in this order to Judgment in *Emperor v. Beni*, AIR 1938 All. 386 (FB) answering in similar reference by the Full Bench of Allahabad High Court wherein it was held that there is no restriction in passing orders for rigorous imprisonment in default of payment of maintenance under Section 488 of the Cr.P.C. Hence, discussing the matter and purpose of such imprisonment this question has been raised.

3. It is also observed in the order that vide information received from Director, Jail, Raipur, the remuneration/wages given to the prisoners is merely 30 Rs. per day for skilled labour work and Rs.25/- per day for un-skilled labour work, which does not match anywhere with the minimum wages prescribed under the Minimum Wages Act by the C.G. Labour Department on 01-04-2017 which is as under:

- (1) Unskilled Labour - Rs.300/- per day,
- (2) Semi-skilled Labour - Rs. 325/- per day,
- (3) Skilled Labour - Rs.355/- per day,
- (4) Highly skilled Labour - Rs.385/- per day.

4. The question of legality of the wages fixed for the prisoners is taken into consideration. It is submitted by learned amicus curiae counsel Smt. Fouzia Mirza assisting the Court, that the Prison is the State subject under the State List of the 7th Schedule of Constitution of India governed by the Prisons Act 1984, and it is further governed by the Prison Manual of the respective State Governments. It is submitted that the modern organization in the world consists

of mainly three components "Custody, Care and Treatment". The very idea behind the imprisonment on account of commission of crime is to make it deterrent, but with the passage of time and evolution of society the object of deterrence gradually transformed into deterrence and reformation which led to the introduction of various reforms including payment of wages for the labour done by the prisoners in the prison. The object behind payment of wages to the prisoners was not only to keep the prisoners busy, but also to enable them to contribute to the cost of their maintenance in jail. It is submitted that in some States higher wages are paid to the prisoners. In the matter of **State of Gujarat and another Vs. Hon'ble High Court of Gujarat**, (1998) 7 SCC 392, it was held by Hon'ble the Supreme Court, that prisoners should be paid equitable wages for the work done by them and quantum of equitable wages payable to the prisoners would be determined by the wage determination body, till then minimum wages shall be fixed by all the State bodies. It is submitted that there is no such information supplied by the State, whether this order has been complied with. Hence, it is high time that State should be directed to consider on re-fixation of wages for the prisoners in jail in accordance with the direction of Hon'ble the Supreme Court in State of Gujarat and another Vs. Hon'ble High Court of Gujarat (supra).

5. On behalf of the State of C.G. it is submitted that the wages that are paid to the prisoners are in accordance with the provisions contained in Section 36A of Prisons Act 1894. It is also submitted that the labour work assigned to prisoners suffering jail sentences is part of the sentence imposed upon them and does not come within the purview of Minimum Wages Act, 1948. It is also submitted that the wages of prisoners undergoing jail sentences is determined after deduction of daily expenses incurred on the said prisoner in jail as according to the present details of expenditure a sum of Rs.174/- per day is incurred on the maintenance and upkeep of each prisoner in jail. It is also submitted that the prisoners are not subjected to work for continuous 8

hours as prescribed in the Minimum Wages Act, instead the work is exploited from them only for 4 hours in a day, i.e., 2 hours in morning and 2 hours in evening. It is further submitted that according to the revised wages for prisoners it has been determined that skilled labour shall be paid Rs.75/- per day and the wages of semi-skilled prisoners shall be Rs.60/- per day and these shall be made effective from 17-08-2017. Hence, it is submitted that there is no reason for issuance of direction to the State with respect to the question raised in this reference.

6. Heard the parties and perused the documents.

7. The question that is raised has been raised earlier also and considered by the various High Courts of the country. This issue has been elaborately considered by Hon'ble the Supreme Court in the matter of *State of Gujarat and another Vs. Hon'ble High Court of Gujarat* (supra). A question was considered whether the prisoners were required to do labour as part of their punishment, should necessarily be paid wages of such work at the rates prescribed under the minimum wages law. Wherein it was held that :-

“5. A Division Bench of the High Court of Kerala (Subramonian Poti CJ and Chandrasekhara Menon, J) in the decision entitled as Prison Reform Enhancement of Wages of Prisoners (1983 KLT 512), seems to have taken the lead in this area and suggested that the wages given to prisoners must be at par with the wages fixed under the Minimum Wages Act, 1948 (for short MW Act) and the request to deduct the cost for providing food and clothes to the prisoner from such wages was spurned down. The Division Bench directed the State Government to design a just and reasonable wage structure for the inmates of the prisons who are employed to do labour, and in the meanwhile to pay the prisoners at the rate of Rs. 8 per day until Government is able to decide the appropriate wages to be paid to such prisoners. Learned counsel for the State submitted before us that the challenge is limited to the question whether deduction of cost of food and clothes is permissible.

6. The Gujarat High Court adopted the same stand as the Division Bench of Kerala had taken in the decision cited supra (1983 KLT 512). The judgment was rendered by a Division Bench headed by P Subramaniam Poti, CJ and the reasons adverted in the decision of the Kerala High Court were reiterated.

7. A Single Judge of Rajasthan High Court suggested that the State Government shall appoint a Commission to go into the entire wage Structure for the convicted prisoners, and to lay down rules, and in the meanwhile directed the State to pay to the prisoners at the rates tentatively fixed by the learned Judge. A Division Bench confirmed the said judgment which is now challenged by the State of Rajasthan.

8. A Division Bench of the High Court of Himachal Pradesh (Bhawani Singh and Devendra Gupta, JJ) vide *Gurdev Singh Vs. State* (AIR 1976 HP 76) directed the State Government to undertake comprehensive jail reforms and appoint a high powered committee within a year to look into the various aspects including payment of reasonable minimum wages to the prisoners. At the same time, the Division Bench directed that "the provisions permitting realisation of maintenance charges from the prisoners be dispensed with forthwith and no future recovery be made in this behalf." State of Himachal Pradesh has now challenged the said judgment before us."

It was argued by the counsel that extracting somebody's work without giving him anything in return is only reminiscent of the period of slavery and the system of begar. It was further held in the judgment delivered in the matter of *State of Gujarat and another Vs. Hon'ble High Court of Gujarat* (supra) :-

"36. Having thus found that like any other workman, a prisoner is also entitled to wages for his work, the question next to be considered is - what is the rate at which the prisoners should be paid for their work? We have no doubt that paying a pittance to them is virtually paying nothing. Even if the amount paid to them is a little more than a nominal sum, the resultant position would remain the same. Government of India had set up in 1980 a committee on jail reforms under the Chairmanship of Mr. Justice AN Mulla, a retired judge of the Allahabad

High Court. The report submitted by the said Committee is known as 'Mulla Committee Report.' It contains a lot of very valuable suggestions, among which the following are contextually apposite:

"All prisoners under sentence should be required to work subject to their physical and mental fitness as determined medically. Work is not to be conceived as additional punishment but as a means of furthering the rehabilitation of the prisoners, their training for work, the forming of better work habits, and of preventing idleness and disorder.....

Punitive, repressive and afflictive work in any form should not be given to prisoners. Work should not become a drudgery and a meaningless prison activity. Work and training programmes should be treated as important avenues of imparting useful values to inmates for their vocational and social adjustment and also for their ultimate rehabilitation in the free community.....

Rates of Wages should be fair and equitable and not merely nominal or paltry. These rates should be standardised so as to achieve a broad uniformity in the wage system in all the prisons in each State and Union Territory."

37. While considering the quantum of wages payable to the prisoners, we are persuaded to take into account the contemporary legislative exercises on wages. Minimum wages law has now come to stay. This Court has held that minimum wage which is sufficient to meet the bare physical needs of a workman and his family irrespective of the paying capacity of the industry must be something more than subsistence wage which may be sufficient to cover the bare physical needs of the worker and his family including education, medical needs, amenities adequate for preservation of his efficiency. (Express Newspapers (P) Ltd., Vs. Union of India, 1959 SCR 12)."

8. The difference in wages of manual work outside the jail and the working prisoners inside the jail, that was also considered and it was observed in paragraph 41 of the said judgment which is as under:-

41. First is this, if wages at the rates fixed under MW Act are paid to a prisoner without making any such deduction its net effect would be that he gets wages apparently more than the emoluments of a workman who does the same type of work outside the jail. This is because the latter has to meet his expenses for food and clothes from the minimum wages paid to him.

Another angle that was examined that Government has to spend for the upkeep of the prisoners in the jail and the observation was made in paragraphs 42 and 43 of the said judgment, which are as under:-

42. The second angle is, the Government which has to pay wages to the prisoner has the additional liability to supply clothes and food to him because government has the duty, willy-nilly, to keep a convicted person in prison during such term as the Court sentences him to imprisonment. It is taxpayer's money which Government is expending for keeping the prisoner inside the jail by providing him food and clothes and other amenities. It is not because Government is happy to do it or is looking forward to do it. It is a legal compulsion on the Government. But its incidence is on the common man's coffer.

43. The third angle, and it is very important for this purpose, is that even MW Act permits the employer to make deductions of certain kinds from the wages of an employed person. Section 12 of the Act permits him to make such deductions as may be authorised and subject to such conditions as may be prescribed by rules. Minimum Wages (Central) rules contain the items of such deductions which are permissible. Among such items, the following two are pertinent: (1) deductions for house accommodation supplied by the employer (2) deductions for such amenities and services supplied by the employer as the government may authorise. Thus deduction of cost of clothes and food supplied to an employee from his wages is not inconsistent with legislative policy.”

It was held in *State of Gujarat and another Vs. Hon'ble High Court of Gujarat* (supra) that the request of the Government to permitting them to

deduct the expense of food and clothing of the prisoners from the minimum wages given to them is reasonable request. It is also observed that in some of the States either in accordance with jail rules or by convention a portion of wages given by the prisoners is sent to his dependants after deduction of the amount spent on the prisoners by the jail.

In this judgment itself Hon'ble the Supreme Court has given consideration to the plight of the victims also regarding which observation has been made in paragraph 46, which is as under:

46. One area which is totally overlooked in the above practice is the plight of the victims. It is a recent trend in sentencing policy to listen to the wailings of the victims. Rehabilitation of the prisoner need not be by closing the eyes towards the suffering victims of the offence. A glimpse at the field of victimology reveals two types of victims. First type consists of direct victims i.e. those who are alive and suffering on account of the harm inflicted by the prisoner while committing the crime. The second type comprises of indirect victims who are dependants of the direct victims of crimes who undergo sufferings due to deprivation of their breadwinner.

Writing this judgment Hon'ble the Chief Justice M.M. Punchhi has concurred with conclusion of the judgment of Hon'ble Justice Thomas in paragraph 50 that:-

50. The above discussion leads to the following conclusions: (1) It is lawful to employ the prisoners sentenced to rigorous imprisonment to do hard labour whether he consents to do it or not.

(2) It is open to the jail officials to permit other prisoners also to do any work which they choose to do provided such prisoners make a request for that purpose.

(3) It is imperative that the prisoners should be paid equitable wages for the work done by them. In order to determine the quantum of equitable wages payable to prisoners, the State concerned shall constitute a wage-fixation body

for making recommendations. We direct each State to do so as early as possible.

(4) Until the State Government takes any decision on such recommendations every prisoner must be paid wages for the work done by him at such rates or revised rates as the Government concerned fixes in the light of the observations made above. For this purpose we direct all the State Government to fix the rate of such interim wages within six weeks from today and report to this Court of compliance of this direction.

(5) We recommend to the State concerned to make law for setting apart a portion of the wages earned by the prisoners to be paid as compensation to deserving victims of the offence, the commission of which entailed the sentence of imprisonment to the prisoner, either directly or through a common fund to be created for this purpose or in any other feasible mode.

Hon'ble Justice D.P. Wadhwa in another part of this Full Bench judgment has observed in paragraph 55 that :-

55.After detailed discussion on various aspects including the object of punishment, the reformatory theory and other such aspects including the advantages of giving fair wages to prisoners, the High Court gave the directions as aforesaid. The Court also examined the provisions of Article 23 of the Constitution with reference to decision of this Court in *People's Union for Democratic Rights and others Vs. Union of India and others* (AIR 1982 SC 1473 = 1982 (3) SCC 235) and held that it was the mandate of the Constitution that the prisoners are to be paid wages for the work done by them. Then the Court examined the question of what would be the reasonable wages and came to the conclusion that it would be Rs. 8/- per day, which would be on ad hoc basis subject to any alteration later when as a result of further study, research and assessment the Government was able to decide upon appropriate wages of the prisoners."

And he has held in paragraph 66 that the prisoners doing hard labour are entitled for minimum wages under the Minimum Wages Act and in that view

the State needs to be directed to fix equitable wages for the prisoners, it was though held that the prisoner is not entitled to the minimum wages as fixed in the Minimum Wages Act, but there has to be some rational basis on which the wages are needed to be paid to the prisoners and then learned Judge concluded concurring with the judgment given by Hon'ble Justice Thomas which is as under:-

104. To conclude while agreeing with the directions issued by Thomas, J., I am of the view that putting a prisoner to hard labour while he is undergoing sentence of rigorous imprisonment awarded to him by a court of competent jurisdiction cannot be equated with 'begar' or 'other similar forms of forced labour' and there is no violation of clause (1) of Article 23 of the Constitution. Clause (2) of Article 23 has no application in such a case. Constitution, however, does not bar a State, by appropriate legislation, from granting wages (by whatever name called) to prisoners subject to hard labour under courts' orders, for their beneficial purpose or otherwise.

9. In **Ashish Colaco Vs. Inspector General of Prisons Collectorate, North Goa, Goa and another**, 2009 SCC Online Bom 1089, the Bombay High Court made observation in paragraph 14 of the judgment that:-

14. How the wages payable to the prisoners are to be dealt with, has been provided by sub rule 6 of Rule 210 read with sub rule 2 of Rule 416 of the said Rules read with the Goa (Prisoner's Victim or his family of offence) Compensation Rules, 2005. Fifty percent of the wages earned by the prisoners are required to be deposited in Common Victims Compensation Fund which is required to be managed by a committee consisting of the District Magistrate as its Chairman, the District Superintendent of Police and the Superintendent of Jail as its members in terms of Rule 3 of the said Rules of 2005. Any interest credited to the Common Victims Compensation Fund shall be added to the fund. The amount of Common Victims Compensation fund is required to be deposited in a personal joint deposit account opened in any Nationalized bank in the name of the Inspector General and the Superintendent of the Jail concerned and the

compensation shall be paid once to a deserving victim of the offence and in case of the death of the deserving victim, to the family member of the victim as decided by the committee. The balance of 50% is to be managed as required by clauses (a), (b) and (c) of sub rule 6 of Rule 210 of the said Rules of 2006, i.e., 30% is required to be deposited in the prisoner's separate Bank account and the entire amount is required to be paid to the prisoner at the time of his release. Another 30% is required to be paid to the prisoner or his family member to meet legal expenses and in case there is no such necessity then this amount will be deposited in the said separate bank account of the prisoner. The remaining 40% is to be made available to the prisoner as and when required by him for purchasing articles from the prison canteen or for making purchases from outside the jail in case canteen facilities are not available in the jail premises.”

It was further held that in accordance with Goa Rules, Common Victims Compensation Fund has been created in jail from the amount of the wages contributed by the prisoners for the purpose of giving compensation to the deserving victims or his/her family members.

10. Issue of equitable wages to the prisoners has also been raised by United Nations by UNODC which are also known as the Nelson Mandela Rules. It finds special mention regarding the Standard of treatment of Prisoner in its rules.

11. As it is, that the Minimum Wages Act 1948 (in short 'the Act, 1948') is not applicable and in the in Prisons Act 1894 there is no such provision for providing equitable wages to the jail inmates. Prison being the subject in the State list of the Constitution, it is duty of the State to provide for proper and equitable wages to the prisoners suffering imprisonment with hard labour. No concern has been shown to bring any amendment in the prisons Act 1894 which is a law enacted about more than a century ago. The issue of equitable wages for prisoners serving rigorous imprisonment in jail is being raised since quite sometime. According to Honb'le the Supreme Court in the matter of *State*

of Gujarat and another Vs. Hon'ble High Court of Gujarat (supra), some of the States have taken care of to enhance the wages of the prisoners working in jail, but it has not appeared that the State of Chhattisgarh has taken care of this matter so far.

12. As it was submitted by the State counsel that the wages for prisoners has been revised by the State and made effective from 17-08-2017 which is Rs.75/- per day for skilled labour, Rs.60/- per day for semi-skilled labour. As work is exploited from prisoners is for half of the day, the wages so revised should have been half compared to the minimum wages prescribed under the Act, 1948 by the C.G. Labour department on 01-04-2017, which provides minimum wages to the unskilled labour Rs. 300/- per day, semi-skilled labor Rs. 325 /- per day, skilled labour Rs. 355/- per day and highly skilled labour Rs.385/ per day, which is wage determination for the wages earned by the labour after performing full time work of 8 hours. Again according to the State counsel the prisoners are subjected to work only 4 hours in a day, which shows that the prisoners have entitlement of wages more than what they are paid.

13. The prison which provides for maintenance, food and upkeep of the prisoner in part 9 of the Rules and exploitation of work from convicted prisoners in part 10 of the Rules, 1968. Rule 647(B) provides that against the work extracted from the convicted prisoners the wages shall be notified by the State Government time to time.

14. A convict becomes inmate of the jail not by his choice. It is a penal law that provides for punishment and sentence of rigorous imprisonment, which does not have any conditions that the prisoner shall have to pay for his maintenance and upkeep inside the jail. Hence, the issue has been raised in the context with the liability imposed upon the respondent in Misc. Criminal Case No.24/2017. In accordance with law, it appears that the wages that may be earned by the respondent suffering imprisonment in default of payment of

maintenance are in no way sufficient to match the liability imposed upon him.

15. Reiterating that this issue has been raised in several States and discussed by several High Courts and ultimately Hon'ble the Supreme Court has laid down the guidelines in the matter of *State of Gujarat and another Vs. Hon'ble High Court of Gujarat* (supra), these guidelines had been followed by the State of Chhattisgarh or not has not been informed by the State Government. Under these circumstances, answering to the reference it is held that fixation of wages for the prisoners in jail below the minimum wages prescribed under the provisions of the Minimum Wages Act, 1948, is not sufficient for such prisoners in jail.

16. The State Government is directed to comply with the directions of Hon'ble the Supreme Court in para 50 of the judgment delivered in the matter of *State of Gujarat and another Vs. Hon'ble High Court of Gujarat* (supra) and revise the wages of the prisoners in jail in such a manner so that the purpose of maintenance law can be served. The State is further directed to revise the minimum wages for the prisoners in jail within a period of six months from the date of passing of this order and report the same to this Court.

Sd/-

(Rajendra Chandra Singh Samant)
Judge