

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (L) NO. 5665 OF 2007**

South Eastern Coalfields Ltd., a Government Company registered under the Companies Act, which is run, managed and controlled by the Government of India, through Chairman-cum-Managing Director, South Eastern Coalfields Ltd., Bilaspur (C.G.)

... Petitioner**versus**

1. State of Chhattisgarh, through the Secretary, Department of Labour, D.K.S. Bhawan, Raipur.
2. Assistant Labour Commissioner, Korba.
3. Regional Labour Commissioner, Jabalpur.
4. M/s Delta Guards Pvt. Ltd., Contractor through Chief General Manager, South Eastern Coalfields Ltd., Korba, Area- Korba.
5. President, Bhartiya Koyla Mazdoor Sangh, Quarter- 2B-2JP Colony, Post Korba, District Korba (C.G.)
6. Shri Yogendra Prasad Sharma, S/o Late Ramtapeswar, 15 Block, T.P. Nagar, Korba
7. Shri Suresh Kumar Kushwaha, S/o Shri Nand Lal, E-18, Subhash Block Colony, Korba
8. Shri Kapila Dev Shrivastava, S/o Shri Sinh Nath, R/o Ratakhar, Korba
9. Shri Basant Kumar Sinha, (Indian Safeguards), S/o Late Raghunath, Subhash Block, Quarter No. C-36, Korba.
10. Shri Ram Sunder Giri S/o Sakal Dev, Krishna Nagar, Korba
11. Shri Ram Lakhan Shah, S/o Ishwar Dayal, Krishna Nagar, Korba
12. Shri Paras Nath Singh (Indian Safeguards), S/o Shri Ramashish Singh, Sitamani, Korba
13. Shri Suresh Singh (Indian Safeguards), S/o Ramashish Singh, Sitamani, Korba.
14. Shri Balmukund Ojha (Indian Safeguards), S/o Late Nandeshwar Prasad, Dadar Nala, Krishna Nagar, Korba.
15. Shri Chote Lal (Indian Safeguards), S/o Madhi Lal, Guards Camp, near State Bank, Korba.
16. Inspector, Minimum Wages Act, 1948.

... Respondents

For Petitioner	:	Mr. Shailendra Shukla, Advocate.
For Respondents No. 1, 2 & 16	:	Mr. S.P. Kale, Dy. A.G.
For Respondents No. 6 to 15	:	Mr. Atanu Ghosh, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****19/01/2018**

1. The present writ petition has been filed by the petitioner-South Eastern Coalfields Limited, a Central Government Public Sector Undertaking, challenging the order dated 20.4.2007 (Annexure P-2) passed by the Authority under the Minimum Wages Act (State), Korba.

2. Brief facts of the case are that on a complaint received from the private respondents *i.e.* respondents no. 6 to 15, the Authority under the Minimum Wages Act under the State Government *i.e.* the Assistant Labour Commissioner, Korba, initiated action against the petitioner-establishment under the provisions of the Minimum Wages Act.

3. From the impugned order it is revealed that though the notices were issued to be served upon the petitioner-establishment, but they did not prefer to contest the matter on merits and thus an *ex parte* order so far as the petitioner-establishment is concerned was passed vide the impugned order.

4. Learned counsel for the petitioner-establishment assails the impugned order on two grounds. Firstly, that the Assistant Labour Commissioner (State), Korba, is not the competent Authority to initiate proceeding under the Minimum Wages Act because under the provisions of the Minimum Wages Act, the appropriate Government, so far as the petitioner-establishment is concerned, is the Central Government. Secondly, that even otherwise the Assistant Labour Commissioner or, for that matter, the Authority under the Minimum Wages Act was not competent to initiate proceeding under Section 20 of the Minimum Wages Act so far as the claim regarding the wages payable to the employees are concerned.

5. As far as the issue of the appropriate Government is concerned, it is the contention of the learned counsel for the petitioner-establishment that the petitioner-establishment is a Central Government Public Sector Undertaking and is a subsidiary company of Coal India Limited which also is a Public Sector Undertaking. Further, the entire control over the establishment is that of the Central Government, in addition the substantive nature of work of the establishment is for extraction of coal

from its mines in the different parts of the country. As such the petitioner-establishment is to be considered a mining industry and so far as the dispute in relation to a mine, as per the Act itself, the appropriate government would be the Central Government and not the State Government, and thus prayed for the impugned order to be quashed only on this ground.

6. It was also the contentions of the learned counsel for the petitioner-establishment that the Authority under the Minimum Wages Act has only the power to determine the minimum wages payable to a worker and that in case of any dispute so far as there being a deficit of the wages paid, that too, less than what is the prescribed minimum wages, the remedy available to the said individual is to initiate appropriate proceeding under Section 33(C)(2) of the Industrial Disputes Act or may initiate appropriate proceeding for less payment being made under the Payment of Wages Act and but definitely not under the provisions of Section 20 of the Minimum Wages Act.

7. Learned Deputy Advocate General appearing for the State Government opposing the petition submits that the appropriate Authority as decided in the impugned order would be the State Government for the reason that the private respondents *i.e.* respondents no. 6 to 15 were deployed in the non-mining areas and therefore in non-mining area the appropriate Government would be State Government and thus there is no discrepancy in the impugned order.

8. This Court proceeds to decide the first issue, as to whether the Assistant Labour Commissioner (State), Korba, would have the jurisdiction to decide the matter pertaining to a mining industry or not. In other words, the moot question is, whether under the definition of 'appropriate Government' of the Minimum Wages Act, the Assistant Labour

Commissioner, Korba, would be competent Authority as per Section 2(b) of the Minimum Wages Act.

9. At this juncture, it would be relevant to refer to the definition of 'appropriate Government' as per Section 2(b) of the Minimum Wages Act, which reads as follows:

“2. Interpretation.— In this Act, unless there is anything repugnant in the subject or context,—

(a) xxx xxx xxx

(aa) xxx xxx xxx

(b) “appropriate Government” means—

(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**, oil-field or major port, or any corporation established by a Central Act, the Central Government, and

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

xxx xxx xxx ”

10. Perusal of the contents of the aforesaid provision would clearly reveal that the petitioner-establishment is in the business of extracting coal and the sale of it. That the private respondents were all engaged as Security Guards for working in the establishment run and operated by the South Eastern Coalfields Limited. Further, it is also not in dispute that the Security Guards were engaged by the South Eastern Coalfields Limited through contractors would definitely fall within the ambit of employment in relation to a mine, as ultimately the offices where the private respondents were posted all were the offices of the petitioner-establishment in relation to mines.

11. The term “in relation to” means the relation between one with the other. An establishment where the nature of job executed is “in relation” with a particular nature, which in this case is a mine. An establishment “in relation to mine” would mean that the nature of work undertaken in it is relating to mine. Even if the place of posting or the nature of job is non-mining, but the establishment is carrying out the substantive work “relating

to mine”. The establishment where the private respondents worked would not have an independent existence. There is a direct and interdependence of each office of the petitioner-establishment.

12. So far as the definition of 'appropriate Authority' is concerned, it is necessary to refer to a judgment of the Hon'ble Supreme Court in the case of **Hindustan Aeronautics Limited & Anr. v. Hindustan Aeronautical Canteen Kamgar Sangh & Ors., 2007 (15) SCC 51**, that is a judgment rendered in July, 2002, where in paragraph 3, the Hon'ble Apex Court in a very categorical term has held as follows:

“**3.** The question that arises for consideration in this case is, whether the High Court was justified in holding that the State Government is the "appropriate Government" under the provisions of the relevant Act. The Constitution Bench recently has considered the relevant provisions of the Contract Labour Regulation Act in *SAIL v. National Union Waterfront Workers* and has come to the conclusion that the “appropriate Government” will be the government which exercises control and authority over the organisation concerned. It is undisputed that the Hindustan Aeronautics Ltd. is an undertaking of the Central Government and it is the Central Government which exercises full control over the same. Issuance of licence by the State Government is no criteria to come to a conclusion that the State Government would be the “appropriate Government”. The impugned judgment of the High Court therefore is, on the face of it, erroneous in view of the Constitution Bench decision of this Court referred to earlier. We, therefore, set aside the impugned judgment of the High Court and hold that the Central Government is the “appropriate government”.”

13. A similar view also is reflected in a landmark Constitutional Bench judgment of the Hon'ble Supreme Court in the case of **Steel Authority of India Ltd. & Ors. v. National Union Waterfront Workers & Ors., 2001 (7) SCC 1**, wherein the Hon'ble Supreme Court in para-46 has held as under:

“**46.** We have held above that in the case of a Central Government company/undertaking, an instrumentality of the Government, carrying on an industry, the criteria to determine whether the Central Government is the appropriate Government within the meaning of the CLRA Act, is that the industry must be carried on by or under the authority of the Central Government and not that the company/undertaking is an instrumentality or an agency of the Central Government for purposes of Article 12 of the Constitution...”

14. A similar view was also taken by the Hon'ble Supreme Court in the case of **M.P. Mineral Industry Association, Nagpur v. The Regional**

Labour Commissioner (Central), Jabalpur & Ors., AIR 1960 SC 1068,

where in paragraph 9 the Hon'ble Supreme Court has held that:

“9. Before dealing with the vires of the impugned notification it would be material to examine the relevant provisions of the Act. The Act has been passed to provide for minimum rates of wages in certain employments. Section 2(b) defines the appropriate government as meaning, inter alia, (1) in relation to any scheduled employment carried on by or under the authority of the Central Government or in relation to a mine the Central Government, and (2) in relation to any other scheduled employment the State Government. It would thus appear that the Legislature intended that the provisions of the Act may in due course be extended to mines and so it has prescribed that in respect thereof the Central Government would be the appropriate Government...”

15. In view of the aforesaid authoritative decisions of the Hon'ble Supreme Court and also taking note of the fact that the substantive nature of business of the petitioner-establishment is mining related activities, the appropriate Government in relation to a mine has been specifically held to be the Central Government as would be clear from the reading of clause (i) of sub-section (b) of Section 2 of the Minimum Wages Act.

16. Given the facts and circumstances of the case, this Court is of the opinion that the appropriate Government so far as the South Eastern Coalfields Limited is concerned would be the Central Government and not the State Government. The impugned order (Annexure P-2) thus is not sustainable as it is without any authority and the same deserves to be and is accordingly set aside.

17. However, the setting aside of the impugned order would not preclude the private respondents *i.e.* respondents no. 6 to 15 from claiming the dues which they are otherwise entitled for, from the appropriate Authority under the other laws applicable.

18. The writ petition thus stands allowed and disposed of accordingly.

**Sd/-
(P. Sam Koshy)
Judge**