

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NO.26504 OF 2001

ORDER:

Sri P.R.Bandari, Managing Director, M/s. Cubex Tubing Limited, Unit-II, Patancheru, Medak District, filed this Writ Petition being aggrieved by the orders of the first respondent-authority under the Minimum Wages Act and Assistant Commissioner of Labour passed in M.W.No.11 of 2000 dated 20.09.2001 under the Minimum Wages Act, wherein the first respondent-authority directed the petitioner to pay an amount of Rs.37,709/- as claimed by the applicant towards difference of wages and also imposed one time compensation of the claim amount of Rs.37,709/- total amounting to Rs.75,418/- by way of a Demand Draft in favour of the first respondent-authority under the Minimum Wages Act, as illegal and arbitrary.

The case of the petitioner is that the petitioner is the Managing Director of M/s. Cubex Tubing Limited, Unit-II, Patancheru, Medak District and he is engaged in manufacture and sale of drawing of copper tubes and wire of various sizes. The said factory has been engaging and using a specialised technology for carrying out its manufacturing activity and is not engaged in any Metal Foundry and General Engineering. Hence, G.O.Ms.No.38 dated 12.03.1993 issued by the Government of Andhra Pradesh revising the Minimum Wages in the employment in Metal Foundry and General Engineering has no application to the said unit. Further, the unit has been paying fair and reasonable wages to all their workmen and there is no dispute with regard to payment of minimum wages. The second respondent had inspected the

petitioner's unit on 07.12.1999 and found that minimum wages are not being paid to about 35 employees and claimed difference of wages for different periods. The company brought to the notice of the second respondent vide letter dated 27.12.1999 that G.O.Ms.No.38 dated 12.03.1993 is not applicable to the said company. In spite of that, the second respondent filed application under Section 22 of the Minimum Wages Act before the first respondent-authority claiming the alleged difference in payment of wages to about 35 employees amounting to Rs.37,709/-. The first respondent-authority on the claim of the second respondent, based on the inspection report and after conducting enquiry, passed the impugned order holding that the petitioner's unit is involved in manufacture and sale of drawing of copper tubes and wire of various sizes and the said factory has been engaging and using a specialised technology and different types of machines are being used for carrying out its manufacturing activity and covered under scheduled employment of Metal Foundry and General Engineering, as notified in G.O.Ms.No.38 dated 12.03.1993, under the provisions of the Minimum Wages Act. Hence, the provisions of G.O.Ms.No.38 dated 12.03.1993 are applicable to the workmen who worked in the petitioner's unit as on the date of inspection of the second respondent found to be engaged by the petitioner and they were not being paid minimum wages as per G.O.Ms.No.38 dated 12.03.1993. Accordingly, the first respondent-authority allowed the claim and passed the impugned order.

Sri D.Ravi Shankar, learned counsel for the petitioner, contended that the claim is not maintainable against the petitioner being workman of the establishment and he never engaged 35

workmen who were also in the claim petition. However, the company engaged them through the contractor but the inspection report shows that out of 45 workmen, 32 workmen's signatures were not obtained in the inspection report and he disputed engagement of 35 employees. Further, he contended that the petitioner was not given ample opportunity before the first respondent-authority, as no document was marked during the enquiry. Exs.R1 and R2 were marked during the cross examination of A.W.1 and A.W.2. Hence, the said documents could not be relied on to come to a conclusion that the petitioner had engaged 45 workmen in the petitioner's unit as on the date of inspection and they were not paid the minimum wages. The impugned order is liable to be set aside as the petitioner was not given opportunity to cross examine A.W.1 and A.W.2 in respect of the documents marked and their genuineness.

Learned Assistant Government Pleader for Labour submits that based on the inspection report of the second respondent, a claim was made before the first respondent-authority under Section 22 of the Minimum Wages Act.

The first respondent-authority, after conducting enquiry as per the procedure envisaged under the provisions of the Minimum Wages Act and after examining A.W.1, the Labour Officer and A.W.2, the Assistant Labour Officer and getting marked Ex.A1, inspection report, Ex.A2, claim notice and Ex.A3, reply of the opposite party and examining R.W.1 and marking Ex.R1, Attendance Registrar from October 1999 to December 1999 and Ex.R2, Register of Wages from October 1999 to December 1999 on behalf of the petitioner, framed the following issues.

1. Whether the opposite party establishment is covered under Minimum Wages Act as Scheduled employment and the G.O.Ms.No.38 dated 12.03.1993 is applicable to the opposite party establishment or not?
2. Whether the workmen, the names mentioned in the claim application are the workmen of the opposite party establishment or not?
3. If so, whether the opposite party is liable to pay claim amount to the workmen or not?

The first respondent-authority, based on the evidence available on record, came to the conclusion that the petitioner had not paid minimum wages to the employees working in the petitioner's unit as per G.O.Ms.No.38 dated 12.03.1993. There is no illegality or irregularity in passing the impugned order. In the facts and circumstances of the case and in the considered view of this Court, it is found that the first respondent-authority passed the impugned order on considering the evidence let in, the documents marked i.e. Exs.A1 to A3 and Exs.R1 and R2 marked during the examination and cross examination of the witnesses and found that the petitioner's unit has been engaging in manufacture and sale of drawing of copper tubes and wire of various sizes and the said factory has been engaging and using a specialised technology and different types of machines are being used for carrying out its manufacturing activity and covered under the scheduled employment of Metal Foundry and General Engineering as notified in G.O.Ms.No.38 dated 12.03.1993. The petitioner failed to produce the relevant documents before the authority in support of his contention that the employees were not working in the petitioner's unit and they were engaged through the contractor. The contention that there is no non-payment of

minimum wages to the employees and no sufficient opportunity was given to the petitioner before the first respondent-authority in passing the impugned order has no legal basis to consider. Hence, the first respondent-authority has rightly passed the impugned order holding that the petitioner is liable to pay Rs.37,709/- as claimed to the workmen as employees of the petitioner's establishment and further directed the petitioner to deposit an amount of Rs.37,709/- as one time compensation to the claim amount of Rs.37,709/- total amounting to Rs.75,418/- by way of Demand Draft in favour of the first respondent. This Court finds that there is no irregularity or illegality in passing the impugned order.

Hence, the Writ Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(M.GANGA RAO, J)

15th June 2018
RRB