

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.17849 OF 2000

ORDER:

The Agricultural Market Committee, Tandur, filed this Writ Petition seeking to issue a Writ of *Certiorari* calling for records relating to M.W.No.8 of 1999 dated 09.06.2000 on the file of the Authority under Minimum Wages Act, 1948 and Assistant Commissioner of Labour Circle-I, Ranga Reddy, wherein the said authority held that the petitioner-Market Committee is an establishment under schedule-1 of The Minimum Wages Act, 1948 (for short 'the M.W.Act') and allowed the petition directing the petitioner to obtain demand drafts drawn in favour of individual workman to the extent of Rs.2,32,492/- within thirty days, and set aside the impugned order.

The case of the petitioner is that the respondents filed M.W. Case No.8 of 1999 before the authority under Minimum Wages Act, 1948 and Assistant Commissioner of Labour, Circle-I, Ranga Reddy District (for short 'the Authority'), against the petitioner under Section 20 of the M.W.Act claiming a sum of Rs.1,16,246/- under G.O.Ms.No.33 dated 06.03.1991 towards the differences of wages for the period from February, 1999, to July, 1999. The Authority held that the petitioner is liable to pay the claimed amount of Rs.1,16,246/- and a compensation equal to the amount claimed i.e. a total amount of Rs.2,32,492/- in favour of the claimants, against which the present Writ Petition came to be filed.

Ms.Neeraja Reddy, learned Standing Counsel appearing for the petitioner, would contend that the respondents are the licensed

weighmen of the petitioner-Market Committee, their license is renewed from year to year on payment of nominal charges. Respondents are neither employees nor workers of the petitioner-Market Committee. Therefore, the question of payment or entitlement of wages under the Act does not arise. The respondents have also admitted in their depositions before the Authority that they are only licensees and not employees. The main aim of the Act is to see that the employees should be paid minimum wages in certain establishments whereas in the present case the respondents are only the licensees. Hence, the provisions of the M.W. Act are not applicable in the present case. It is further contended that if the respondents are not getting sufficient commission or confirmed rates as fixed by the Director of Marketing, as their terms are governed by license, they are always at liberty not to renew their licenses. The respondents are not entitled for any amounts as claimed by them. The petitioner has no power or authority to enhance the rates of commission and the said power is vested only with the Director of Marketing. No relief can be granted in M.W. Case No.8/1999 whereas the authority under the M.W. Act on erroneous appreciation of fact and law held that the employment of weighmen is not only incidental but also very essential to conduct the business of the petitioner-Market Committee and earn profits in lakhs; there was a procedure of issuing appointment letters to the weighmen during the period 1960-70 by the Superintendent, Market Committee, and the Chairman, Market Committee; later, in 1970s, in view of the Andhra Pradesh (Agricultural Produce & Livestock) Markets Act, 1966 came into force on 19.10.1967 and the Rules made

thereunder were published on 23.11.1967, as per rule 49 (1) no person shall operate within a notified area as a weighman except under and in accordance with the conditions of the license granted by the Market Committee. The petitioner has terminated the services of the respondents as seen from Ex.A-8-Notice dated 28.02.1970 issued by the Chairman, Market Committee. However, the authority erroneously held that there is a relationship of Master and Servant between the petitioner and the respondents. The Authority also grossly erred in holding that G.O.Ms.No.33 dated 06.03.1991 issued under the M.W. Act is applicable to the petitioner-Market Committee, which is commercial establishment keeping in view its activities, and as per the clarification of the Commissioner of Labour vide letter No.J2/40873/92 in January, 1993 regarding the applicability of G.O.Ms.No.33 to the Market Committee. In fact, the respondents wont come under the purview of G.O.Ms.No.33 dated 06.03.1991.

Sri D.Govinda Chary, learned counsel for the respondents, would contend that the respondents are weighmen working in the petitioner-Market Committee and are paid Rs.500/- to Rs.600/- per month. After amendment of the Act, by dispensing with issuance of appointment orders, the Market Committee started issuing licenses to the weighmen and allowed them to work in the Market Committee area as weighmen and the Market Committee is allotting the works to the respondents and also had full control over the respondents in all respects. The respondents are attending to the duties from 10.00 a.m. to 7.00 p.m. on rotation basis. Petitioner is initiating disciplinary action for unauthorized absence of the respondents. The farmers, whose produce is

weighed, would pay Re.0.40 ps. per bag to the Commission Agent. The Commission Agent makes payment to the President of Weighmen Association every day. Hence, there is employer and employee relationship between the petitioner-Market Committee and the respondents. The activities of the petitioner-Market Committee would fall within the schedule of employment and the petitioner is liable to pay the difference of minimum wages and compensation under the M.W. Act.

On perusal of the record and in considered view of this Court, it is found that the respondents are functioning as weighmen in The Agricultural Market Committee, Tandur. 'Weighman' means a person who weighs or counts a consignment of the notified agricultural produce, livestock or products of livestock. As per Rule 49 (1) of The Andhra Pradesh (Agricultural Produce & livestock) Markets Rules, 1969, no person shall operate within a notified market area as weighman except under and in accordance with the conditions of the license granted by the Market Committee and licensing system is also upheld by the Hon'ble Supreme Court.

The word 'employee' is defined under Section 2 (i) of the Minimum Wages Act, 1948 as under:

- (i) "employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted, or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other

premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the Union.

The word 'Wages' is defined under Section 2 (h) of the Minimum Wages Act, 1948 as under:

(h) "Wages" means 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;

In the present case, the respondents-weighmen are operating in the market area under license issued under Rule 49 of the Andhra Pradesh (Agricultural Produce & Livestock) Markets Rules, 1969 and are being paid from the commission received by the

Commission Agent. The Commission Agent makes payment to the President of Weighmen Association every day, in turn the amount would be distributed to the weighmen.

Even though the Market Committee comes under the Scheduled employment as per schedule under the caption 'employment' under any local authority under Section 2 (g) and Section 27 of the Minimum Wages Act, the services of the regular employees of the Market Committee are governed by the A.P. Market Service Rules and A.P. Market Subordinate Service Rules and are being paid as per pay scales. Hence, the services rendered by the weighman in the Market Committee and the licensed weighman, operating in the market areas as per the terms and conditions of the license only, as such weighman is not an employee of the Market Committee as defined under Section 2 (i) of the M.W.Act and remuneration received by the weighman does not come within the meaning of wages defined under Section 2 (h) of the M.W.Act. The relationship between the petitioner and respondents is that of licensor and licensee only. No relationship of employer and employee exist between the petitioner and respondents. Thus, the activities/services rendered by the weighman in the market area, does not come within the ambit of employee as defined under Section 2 (i) of the M.W.Act and what is paid to the weighman does not come within the meaning of wages under Section 2 (h) of the M.W.Act. Hence, the finding of the Controlling Authority under Minimum Wages Act that employer and employee relationship exist between the parties, by relying on the documents under Exs.A.3 to A.8 issued earlier to framing of rules which are not in force, as per the amended Rules, 1969, is

erroneous and contrary to the provisions of law. Hence, the respondents-weighmen are not entitled to payment of minimum wages under the provisions of Minimum Wages Act.

For the above reasons, the Writ Petition is allowed setting aside the order dated 09.06.2000 passed in M.W.No.8 of 1999 by the Authority under Minimum Wages Act, 1948 and Assistant Commissioner of Labour Circle-I, Ranga Reddy.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

26.10.2018
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(M.GANGA RAO, J)