

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order: November 20, 2018

+ W.P.(C) 5156/2018 & CMs 20030/2018 & 20032/2018
+ W.P.(C) 5644/2018 & CMs 22038-39/2018
+ W.P.(C) 5665/2018 & CMs 22065-66/2018
+ W.P.(C) 5681/2018 & CMs 22114-15/2018
+ W.P.(C) 5685/2018 & CMs 22120-21/2018
+ W.P.(C) 5686/2018 & CMs 22122-23/2018
+ W.P.(C) 5691/2018 & CMs 22135-36/2018
+ W.P.(C) 5705/2018 & CMs 22164-65/2018
+ W.P.(C) 5706/2018 & CMs 22166-67/2018
+ W.P.(C) 5712/2018 & CMs 22173-74/2018
+ W.P.(C) 5713/2018 & CMs 22175-76/2018
+ W.P.(C) 5715/2018 & CMs 22179-80/2018
+ W.P.(C) 5717/2018 & CMs 22182-86/2018
+ W.P.(C) 5718/2018 & CMs 22185-86/2018
+ W.P.(C) 5719/2018 & CMs 22188-89/2018
+ W.P.(C) 5721/2018 & CMs 22192-93/2018
+ W.P.(C) 5729/2018 & CMs 22237-38/2018
+ W.P.(C) 5731/2018 & CMs 22241-42/2018
+ W.P.(C) 5741/2018 & CMs 22267-68/2018
+ W.P.(C) 5742/2018 & CMs 22269-70/2018
+ W.P.(C) 5743/2018 & CMs 22272-73/2018
+ W.P.(C) 5750/2018 & CMs 22301-02/2018
+ W.P.(C) 5752/2018 & CMs 22303-04/2018

CYFUTURE INDIA PVT. LTD.

.....Petitioner

Through: Mr. Aditya Kumar Choudhary and
Mr. Amit Pratap Shaunak,
Advocates

Versus

RAKESH KUMAR PAL AND ORS.
SHIVANI RANI & ORS
SUBHASH KUMAR RAY & ORS
AMIT KUMAR AND ORS.
SUMIT KUMAR SHARMA AND ORS.

ROHIT KUMAR AND ORS.
MANOJ SHARMA & ORS
SUJEET CHANDER VERMA AND ORS.
MANOJ BAN AND ORS.
NILMANI SONU AND ORS.
RAKESH KUMAR & ORS
MIRZA NAFEES BAIG AND ORS.
RAMESH CHAND AND ORS.
TARUN KUMAR AND ORS.
MANISH KUMAR SINGH AND ORS.
LAL SINGH & ORS
HARISH KUMAR ARYA AND ORS.
DEEPAK TANK AND ORS.
SHAH ALAM AND ORS.
SAVITA AND ORS.
MANOJ KUMAR AND ORS.
VINAY KUMAR & ORS
BALRAJ SINGH DHIR AND ORS.Respondents

Through: Mr. Manish K. Bishnoi and Ms.
Tanvi Sapra, Advocates
Mr. Saket Sikri and Ms. Niyati
Patwardhan, Advocates for
respondent No. 3

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR
ORDER
(ORAL)

1. With the consent of learned counsel for the parties, the above captioned petitions have been heard together, while treating W.P. (C) 5156/2018 as lead matter, and all these petitions are being disposed of by this common order.
2. Impugned order of 17th April, 2018 (*Annexure P-16*) directs petitioner to pay the excess amount of the minimum wages vis-à-vis the State Government and the Central Government Notification under

Minimum Wages Act alongwith levy of compensation, which is two times the excess amount payable. Impugned order takes note of Government of India's Notification on 19th January, 2017 which provides for minimum wages, which are higher than the minimum wages fixed by Government of NCT of Delhi, for the period from 19th January, 2017 till 2nd March, 2017 and relies upon petitioner's undertaking to pay the minimum wages as per Central Government's Notification of 19th January, 2017 for the period from 19th January, 2017 till 2nd March, 2017.

3. Learned counsel for petitioner assails the impugned order of 17th April, 2018 as well as order of 9th January, 2018 passed by the Competent Authority under *the Minimum Wages Act, 1948* on the ground that under some confusion, it was undertaken on behalf of petitioner to pay minimum wages to respondents-Workmen as per Central Government's Notification (*Annexure P-5*). Attention of this Court is drawn to Central Government's Notification of 19th January, 2017 (*Annexure P-5*) to submit that Central Government's Notification would apply only when the minimum wages fixed by the State Government for the employees are lower than the minimum wages fixed by the Central Government and not vice-versa. It is submitted that petitioner is governed by State Government's Notification and minimum wages as per State Government's Notification have been already paid and therefore, impugned order directing payment of the excess amount of minimum wages vis-à-vis Central and State Government Notification alongwith levy of compensation imposed to respondents-Workmen is unjustified. Hence, quashing impugned order is sought in these petitions.

4. On the contrary, learned counsel for respondents-Workmen submits that petitioner cannot be permitted to wriggle out of the undertaking given to the Competent Authority, as recorded in the order of 9th January, 2018, and the minimum wages payable ought to be as per the minimum wages payable by the Central Government and so, the impugned order suffers from no infirmity. Thus, dismissal of these petitions is sought.

5. Upon hearing and on perusal of impugned order of 17th April, 2018 (*Annexure P-16*), order of 9th January, 2018 (*Annexure P-14*) and the material on record, I find that the impugned order is based on the statement of petitioner to the effect that petitioner had agreed to pay the excess amount of minimum wages vis-à-vis Central Government and the State Government Notifications and so, in the considered opinion on this Court, there was no justification to have granted compensation two times more than the excess amount. Apart from the financial stringency expressed by petitioner, levy of compensation is otherwise not justified, as the impugned order is not strictly on merits, though it does refer to the Notification of Government of India. So, the compensation levied vide impugned order deserves to be set aside.

6. It is matter of record that petitioner had volunteered to pay the minimum wages as per Central Government's Notification (*Annexure P-5*). During the course of hearing, it was brought to the notice of this Court that *Mr. Mukesh Yadav*, Authorized Representative of petitioner, alongwith counsel-*Aditya Kumar Chaudhary*, Advocate was present before the authority concerned on 9th January, 2018 when petitioner had volunteered to pay the wages as per the Central Government's

Notification for the period from 19th January, 2017 to 2nd March, 2017. No prudent person would accept that '*Offer*' to make the payment as per the Central Government's Notification was out of any confusion. It has not been spelt out as to what was the confusion. Furthermore, affidavit of above-named *Mukesh Yadav*, Authorized Representative of petitioner, or of the counsel-*Aditya Kumar Chaudhary*, Advocate, who were present on 9th January, 2018 when the order (*Annexure P-14*) was passed, is forthcoming and so, petitioner cannot be permitted to wriggle out of the '*Offer*' to pay the compensation as per Central Government's Notification (*Annexure P-5*).

7. It is quite evident that if the minimum wages fixed by Central Government are lower than the minimum wages fixed by the State Government for the employees, then the minimum wages as fixed by the State Government are payable, but not *vice-versa*. Petitioner has already paid the minimum wages as per the State Government, but in tune with this social legislation, payment of minimum wages as per Central Government's Notification for the period 19th January, 2017 to 2nd March, 2017 cannot be faulted with. However, I find that petitioner had volunteered to pay the minimum wages as per the Central Government's Notification and so, in the peculiar facts of the instant case, petitioner cannot be allowed to wriggle out of it as the '*Offer/undertaking*' to pay the minimum wages as per the Central Government's Notification is not vitiated by any coercion, fraud etc..

8. In light of the aforesaid, impugned order so far as it levies compensation two times the excess amount payable is put on hold subject to petitioner paying the excess amount of minimum wages, as directed

vide the impugned order, to respondents-Workmen within a period of twelve weeks from today, failing which the compensation leviable under Section 20 of *the Minimum Wages Act, 1948* shall stand revived. Needless to say, if petitioner pays within time, excess amount to respondents-Workmen in terms of impugned order, then petitioner stands relieved of paying compensation as levied by the impugned order.

9. With aforesaid directions, these petitions and the pending applications are disposed of while directing petitioner to pay composite litigation expenses of ₹30,000/- to Shri. M.K. Bishnoi, Advocate who has ably assisted the court on behalf of respondents-Workmen.

NOVEMBER 20, 2018
v/s

(SUNIL GAUR)
JUDGE