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

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Date of decision: 22.04.2021

+ **W.P.(C) 3807/2021**

JKUMAR - CRTV JV

..... Petitioner

Through Mr. J.P. Cama Sr. Advocate with
Dr. Shashwat Bajpai, Ms. Suruchi
Kumar and Mr. Sharad Agarwal,
Advocates.

versus

**REGIONAL LABOUR COMMISSIONER,
& ORS.**

..... Respondents

Through Mr. Vaibhav Maheshwari and
Mr. Aadarsh Prakash, Advocates
for Mr. Rohit Pandey, Advocate
for R-2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

Hearing has been conducted through Video Conferencing.

JYOTI SINGH, J. (Oral)

CM No. 11480/2021 (Exemption)

Allowed, subject to all just exceptions.

Application is disposed of.

W.P.(C) 3807/2021 and CM No. 11479/2021

1. Present petition has been filed seeking a writ of Certiorari quashing the impugned order dated 26.02.2021 passed by Respondent No.1 and in

the alternative, a writ or a direction to Respondent No.1 to provide adequate opportunity of hearing to the Petitioner, after remanding the matter, for consideration afresh.

2. Petition arises out of an order passed by the Competent Authority under the Minimum Wages Act, 1948 (hereinafter referred to as '**the Act**') and Regional Labour Commissioner (Central), New Delhi (hereinafter referred to as '**the Authority**').

3. As per the case set out in the petition, Petitioner is a Company engaged in the business of construction projects for various entities and in the course of its business, undertook a project for Delhi Metro Rail Corporation in 2014. For the said project, thousands of employees were employed and were paid full wages for the period of their employment, which were above the minimum wages as prescribed under the Act.

4. Upon completion of the project and having no requirement to employ all the employees further, Petitioner terminated the contracts of employment of certain employees, as per applicable laws. However, as an afterthought and a retaliation to the termination, approximately 51 employees, represented through Respondent No. 2, filed complaints alleging non-payment of minimum wages as prescribed under the Act as well as non-payment of overtime.

5. Complaints were divided into two sets by the concerned Authority, i.e., MWA No. 179/2018 comprising of 21 employees and MWA No. 180/2018 comprising of 30 employees. Present petition deals with the MWA No. 179/2018.

6. Petitioner, vide its letter dated 25.10.2018, responded to the notice issued by the Authority and raised a preliminary objection that the claims of minimum wages dated back to 2015 and were thus barred by limitation as prescribed under Section 20 (2) of the Act, i.e., six months from the date the claims allegedly became payable.

7. Petitioner also filed a written statement to the claim petition, on merits, denying the non-payment of minimum wages under the provisions of the Act and provided documents to that effect, to the extent they were readily available at their Office at Delhi. In so far as other documents such as attendance registers, etc., were concerned, time was sought by the Petitioner to produce the documents as the same were lying at the registered Office in Mumbai.

8. Hearings were conducted by the Authority on various dates during the year 2019-2020, last one being on 20.01.2020, when the parties were directed to put forth material in support of their claims and the next date of hearing was fixed as 12.03.2020. However, on account of nationwide lockdown due to pandemic COVID-19, an adjournment was sought by the counsel for Respondent No.2 on 12.03.2020.

9. Vide order dated 12.03.2020, Authority listed the matter on 17.04.2020 for arguments, with liberty to the Petitioner to file evidence. However, the matter was never argued thereafter by either party and effective opportunity of hearing was denied to the Petitioner.

10. Mr. J.P. Cama, learned Senior Advocate appearing for the Petitioner, instructed by Mr. Shashwat Bajpai, assails the impugned order

on the ground that Respondent No.1 has admitted the claims filed by the employees despite being barred under the provisions of Section 20 (2) of the Act, wherein a limitation period of six months is provided, commencing from the date the claims become payable. Although the proviso enables a party to seek condonation of delay, but an application is required to be filed by the Applicant, showing sufficient cause for the delay, which was not done in the present case. While Mr. Cama concedes that from the inspection of the record before the Authority, it is evident that an application seeking condonation of delay was filed, but contends that a copy was not given to the Petitioner herein, enabling the Petitioner to file a response thereto. Reliance is placed on the judgment of the Supreme Court in the case of Balwant Singh (Dead) vs. Jagdish Singh and Ors., (2010) 8 SCC 685, wherein it was held that a specific application is required to be filed indicating sufficient reasons which are adequate and legal, for seeking condonation of delay. Delay cannot be condoned by any Court on misplaced sympathies or for reasons which are not cogent.

11. Without prejudice to the said contention, Mr. Cama submits that even on merits, Petitioner has a strong case and in case sufficient opportunity was granted to place on record the relevant documents, more particularly, attendance sheets and the payment vouchers/slips, Petitioner would have established that wages, as due and payable, were paid to the workmen, in accordance with the Act and nothing was outstanding.

12. Issue notice.

13. Mr. Rohit Pandey, Vaibhav Maheshwari and Mr. Aadarsh Prakash, Advocates enter appearance on behalf of Respondent No. 2 and accept notice.

14. With the consent of learned Senior Advocate appearing for the Petitioner and counsels for the Respondents, the writ petition is taken up for final hearing and decided.

15. Learned counsels appearing for Respondent No. 2 vehemently and strenuously oppose the present petition. It is submitted that it is incorrect for the Petitioner to argue that the application seeking condonation of delay did not disclose sufficient or cogent reasons, enabling the Authority to condone the delay. Learned counsels submit that the application disclosed sufficient cause for condonation of delay, one of them being that the workmen were apprehensive of their termination in case they raised any dispute at that stage and this caused a delay beyond the limitation period of six months. It is also argued that it has to be kept in mind that claims are under the Minimum Wages Act, 1948, which is a welfare Legislation, enacted for a class, which does not have equal bargaining power with mighty Managements and in that background, the application and the reasons furnished therein must receive a liberal construction and approach. It is disputed that the application was not supplied to the Petitioner and that the record would testify this stand of Respondent No.2.

16. Responding to the argument of opportunity of hearing, learned counsels for Respondent No.2 submit that sufficient opportunity was granted to the Petitioner to place on record the documents it wished to

rely upon. This is clearly reflected from the impugned order itself, where the Authority records that since the matter relates to payment of alleged outstanding wages, an order was passed during the previous hearing that if both parties produced documents to substantiate their claims, leading of evidence would not be required. Both parties were directed to produce the documents on which they have preferred their claims, i.e., attendance cards, etc., containing the hours for the work period in question. It was also mentioned in the said order that if the parties failed to produce the documents, it would be presumed that they do not possess any document to substantiate their stand. It is thus argued that having not availed of the opportunity granted to file the documents, it is not open to the Petitioner to contend before this Court that sufficient opportunity of hearing was not granted.

17. I have heard Mr. J.P. Cama learned Senior Advocate with Mr. Shashwat Bajpai, counsel for the Petitioner and Mr. Rohit Pandey, Mr. Vaibhav Maheshwari with Mr. Aadarsh Prakash, learned counsels for Respondent No.2.

18. Present petition has its genesis in a claim filed by Respondent No. 2/Universal Proutist Labour Federation, before the concerned Authority under Section 20(1) of the Act. Section 20(2) of the Act provides that where an employee has any claim under sub-section (1), the employee or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf, or any inspector, or any person acting with the permission of the Authority appointed under sub-section (1), may apply to such Authority for a direction under sub-section (3). Proviso to

sub-section (2) provides a period of six months from the date the minimum wages or any other amount becomes payable, to prefer a claim under sub-section (1). Second proviso to sub-section (2), however, provides that any application can be admitted even after the period of six months, provided the Applicant satisfies the Authority that he had sufficient cause for not making the application within the limitation period.

19. There is no doubt that the Minimum Wages Act, 1948 is a welfare Legislation and the Authority must be liberal in condoning the delay in filing claims before the Competent Authority as the underlying intent of the welfare Legislations is to be kept on the canvass in the background while deciding such applications. However, this Court cannot overlook the provisions of sub-section (2) of Section 20 of the Act, which mandate that while deciding an application seeking condonation of delay, Authority must satisfy itself from the reasons set out in application, whether 'sufficient cause', which prevented the Applicant from approaching the Authority within the prescribed period of limitation, i.e., six months, is made out. The satisfaction has to be based on cogent and legal material on record in support of the reasons set out to justify delay and the order condoning the delay must reflect such satisfaction and spell out reasons which weighed with the Authority to condone the delay.

20. I have carefully perused the impugned order. No reasons for condoning the delay are discernible, save and except, that the workmen were apprehensive of termination, if they raised any dispute, with regard to wages, with the management and that the Act is a welfare Legislation.

By a somewhat sketchy and a cryptic order delay has been condoned and this Court is unable to decipher what weighed with the Authority to conclude that the claimants had made out 'sufficient cause' that prevented them, for over 3 years, to approach the Authority. To say the least, order does not even refer to the grounds, if any, set out in the application, to explain the delay of 3 years, as the expression used is 'bird eye examination'. Reasons are the heart and soul of an order and reflect application of mind and even on this touchstone, impugned order is unsustainable, being bereft of reasons. Interestingly, the Authority places reliance on a judgment of Karnataka High Court at Bangalore, but there is no mention of the Title/Case Number or even the date of decision of the said case. How the judgement was applicable to the present case, is anybody's guess. No doubt that the claims were preferred under a welfare Legislation, but the provisions of the Act itself require the applicant to set out 'sufficient cause' for seeking condonation of delay and a reciprocal obligation is cast on the Authority to apply its mind and see if cogent reasons have been furnished making out sufficient cause. The impugned order does not meet the said threshold and deserves to be set aside. Relevant part of the impugned order is as under:-

"A bird eye examination of the condonation petition filed by the applicants reveals that they could not file their claim application earlier due to the fear of their termination though they were discriminated with similarly placed workmen under the same employer. The bonafide case mentioned seems to be plausible but at the same such a long period of 4-5 years does not look appropriate to decide whether a claim application is required to be filed. In this respect views of several upper courts may vary but I find that if delay to the extent of 3 years is

condoned considering an order of Hon'ble High Court of judicature at Bangalore. It will remain justified as the M.W.Act, 1948 is a welfare legislation where condonation may not interfere in justice to poor workmen. Hence the period of up to 3 years is condoned and the claim of the applicant is allowed for the period from 1.4.2015 to 31.5.2018.

In the fact and circumstances mentioned above, contradictions are evident and if there is any doubt its benefits should go to the applicant.”

21. Accordingly, the order dated 26.02.2021 is set aside and the matter is remanded back to the concerned Authority for fresh adjudication, both on the question of limitation as well as merits, in case the issue of limitation is decided in favour of Respondent No. 2.

22. Petitioner herein is given liberty to file reply to the application seeking condonation of delay and Respondent No.2 herein shall be at liberty to file rejoinder to the said reply. Opportunity is also granted to both parties to file before the Authority, relevant documents and lead evidence in support of their respective claims/stands as well as file written submissions. After considering the pleadings and documents on record, a fresh decision shall be taken by Respondent No.1, in accordance with law.

23. Both sides pray that a time schedule be fixed before the Authority for deciding the matter. Taking into account the special circumstances that are prevalent due to pandemic COVID-19 and its impact on the functioning of the Courts, it is deemed fit to direct that the entire exercise from taking the replies/documents on record till passing of the final order

shall be completed by Respondent No.1 within a period of four months from today.

24. Petition is disposed of in the above terms, along with the pending application.

25. It is made clear that this Court has not expressed any opinion on the merits of the case or with respect to limitation and the concerned Authority shall decide the matter, uninfluenced by any observation in the present order.

APRIL 22, 2021
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JYOTI SINGH, J



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