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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.19832 of 2011

***M/s. Industrial Security & Allied
Services, Bhubaneswar***

....

Petitioner

Mr. S.K. Mishra, Advocate

-versus-

***Labour Enforcement Officer (C),
Bhubaneswar and another***

....

Opp. Parties

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK**

**ORDER
05.04.2022**

Order No.

Dr. S. Muralidhar, CJ.

04.

1. The challenge in the present petition which is a proprietary concern registered with the Government of Odisha, Home (Special Section) Department and licensed in the business of private security agency is to an order dated 12th May, 2011 passed by the Authority under the Minimum Wages Act, 1948 (MW Act) and the Regional Labour Commissioner (Central), Bhubaneswar in Application No.MWA/62/2009. By the said impugned order, the Petitioner was asked to deposit compensation of Rs.4,75,015/- apart from the differential minimum wages payable to the workers engaged by the Petitioner to render services at the premises of the Ordnance Factory, Badmal in the district of Bolangir, Odisha which worked out to Rs.4,75,015/-. Consequently, the total amount

required to be deposited by the Petitioner in terms of the impugned order was Rs.9,50,030/-.

2. Although the present petition was filed on 25th July, 2011, it was listed for the first time only on 6th April, 2015. Thereafter on 16th April 2015 notice was issued to the Opposite Parties. No interim order has been passed at any stage of the proceedings although the present writ petition has been pending over 11 years.

3. At outset Mr. Mishra, learned counsel appearing for the Petitioner states that although there is no interim order passed in the present petition till date no steps have been taken by the Opposite Parties i.e. the Labour Enforcement Officer (OP No.1) and the Regional Labour Commissioner (Central)(OP No.2) to have the impugned order enforced.

4. Mr. Mishra submits that pursuant to a Tender Call Notice (TCN) issued by OP No.3 inviting bids for deploying Private Security Guards, the Petitioner submitted bid. According to the Petitioner in the said TCN dated 23rd August, 2008 there was no mention that the Petitioner was required to pay minimum wages to the Security Guards as per the Notification of the Central Government. The Petitioner states that when submitting a price bid on 14th September, 2008, the Petitioner bonafide understood that the Petitioner's required to be paid minimum wages as notified by the State Government. Therefore, in respect of 71 Security Guards supplied by the Petitioner the price quoted was @ Rs.3,189/- per head

including statutory payments/deductions to be made and deposited with the Provident Fund & ESI Authorities.

5. The Petitioner's bid was accepted by communication dated 22nd November, 2008 of Opposite Party No.3. Pursuant thereto Security Guards, Supervisors and Inspectors were supplied by the Petitioner to the establishment of Opposite Party No.3.

6. On 22nd December, 2008 the Works Manager of Opposite Party No.3 wrote to the Petitioner asking it to pay the individual Security Guards deployed in the establishment of Opposite Party No.3 minimum wages as per the latest Notification issued by the Government of India, Ministry of Labour & Employment.

7. Replying to the said letter dated 7th January, 2009, The Petitioner took the stand that due to non mention in the TCN of the Petitioner's requirement of having to pay minimum wages as per the Central Government Notification, the Petitioner would not be in a position to make such payment unless sanction was granted for such payment. In other words, the stand of the Petitioner was that the differential minimum wages ought to be paid only by the principal employer i.e. Opposite Party No.3 and not the contractor i.e. the Petitioner.

8. After the Labour Enforcement Officer (Central) (OP No.1) visited the establishment of Opposite Party No.3 a communication was sent on 15th May/10th June, 2009 enclosing a calculation sheet pertaining to the differential

amount of minimum wages with regard to 102 persons supplied by the Petitioner 99 of whom were Security Guards and 3 of whom were Gunmen.

9. Petitioner then wrote to Opposite Party No.3 on 23rd June 2009 asking Opposite Party No.3 to release the arrears of the minimum wages to the tune of Rs.7,42,453/-. Meanwhile, MWA Case No.62 of 2009 was instituted by Opposite Party No.1 before the Authority under the MW Act against the Petitioner in which notice was issued to the Petitioner. The Petitioner then filed an elaborate reply to the said show-cause notice taking the same stand viz., that the Petitioner was not liable to pay the minimum wages in terms of the Central Government Notification since that was not mentioned as requirement in the TCN.

10. As regards the request of the Petitioner before the Authority under the MW Act that Opposite Party No.3 should be impleaded as a party, the impugned order noted the views of the General Manager, Ordnance Factory that the Principal Employer was not within the ambit of the MW Act.

11. Mr. Mishra refers to Section 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA Act) in terms of which the principal employer is liable to make payment of wages in full or the unpaid balance, as a result of failure of the contractor to make payment of wages or making short payment. He also referred to Section 2 (e) (ii) of the MW Act, 1948 which defines as under:

“2. (e) ‘employer’ means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except in sub-section (3) of section 26,

(i).....

(ii) in any scheduled employment under the control of any Government of India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;

(iii).....”

12. The contention is that in the present case, the requirement to pay the differential minimum wages is that of Opposite Party No.3 i.e. the principal employer and not the contractor particularly since the TCN made no such mention of the requirement of the contractor having to pay. Reliance has also placed an order passed by the same authority under the MW Act in another case being Application No.MWA/97/2010 dated 12th May, 2011 where the liability was passed on to the principal employer and not on the Contractor.

13. The above submission has been considered. The liability to make payment under the MW Act is a statutory liability. As part of the terms and conditions of the TCN is Clause-14 which reads as under:

“The Agency shall comply with relevant Labour Laws like Minimum Wages Act, ESI Act, Contract Labour Regulations and Arbitration Act, Workmen’s Compensation Act, PF etc. If owing to

breach of any provisions of these Acts or any other relevant Act on the part of the Agency, GM/OFBL is held liable by appropriate authority under these Acts as principal employer, and is asked to pay damage/fine for such breach, the Agency shall indemnify such losses to be incurred by OFBL.”

14. The Petitioner while submitting the price bid was expected to be conscious of the all the provisions of the applicable Labour Laws and that expressly included the MW Act. Beyond this there is no requirement that in the TCN it should be specifically mentioned that the Contractor would be liable to make payment of Minimum Wages as per the Central Government Notification. The Petitioner was fully conscious that Opposite Party No.3 was a Central Government Undertaking to which the Central Government Notification under the MW Act would apply. It is not possible for the Court to accept the plea of the Petitioner that he bonafide believe that he is liable to make payment only as per the State Government Notification under the MW Act and not the Central Government Notification.

15. It is then argued by Mr. Mishra that if the price bid quoted by the Petitioner on the basis of the State Government Notification was found to be unacceptable to Opposite Party No.3, then Opposite Party No.3 ought to have rejected the bid. This plea does not advance the case of the Petitioner. Having submitted a financial bid, the Petitioner was expected to be aware of the statutory liability. It is not for Opposite Party

No.3 to advise the Petitioner what the price it should have been.

16. As regard the liability under the CLRA Act, the wording of Section 21 (4) thereof is instructive. It reads as under:

“21. Responsibility for payment of wages.-
(1).....

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.”

17. The liability under Section 21 (4) of the CLRA Act shifts to the principal employer only if the Contractor “fails to make payment of wages”. In the considered view of the Court that stage is yet to be reached. At the stage when the Petitioner was required to make those payment of such wages, the Petitioner approached this Court challenging the demand made. It is only after the demand is confirmed by the dismissal of the present petition and the Petitioner continues to fail to pay the required amount, that Section 21(4) of the CLRA Act would come into play.

18. The argument based on the definition of who the employer is for the purpose of Section 2(e) (ii) of the MW Act also does not help the case of the Petitioner since clearly it is pursuant to

a labour contract that the workers have been supplied by the Petitioner as an Agency to work in the factory of Opposite Party No.3. In terms of the tender conditions the primary liability to make payment of wages is clearly on the Petitioner.

19. The decision of the authority in Application No. MWA 97 of 2010 appears to have turned on its own facts. The question there was not about the differential wages payable as a result of the applicability of the notification issued by the Central Government as opposed to that payable under the State Government Notification. Moreover, in that case the contractor chose to remain ex parte. Therefore, the said order is clearly distinguishable on facts.

20. For all of the aforementioned reasons, the Court finds no reason to interfere. The writ petition is accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge