

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.23457 of 2015

Food Corporation of India

Petitioner

Mr. B.K. Das, Advocate

-Versus-

***M/s. Prime Securities and Intelligence
Services, Bhubaneswar & another***

Opp. Parties

CORAM:

**JUSTICE S. TALAPATRA
JUSTICE M.S. SAHOO**

**ORDER
21.10.2022**

Order No.

07.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. B.K. Das, learned counsel appearing for the petitioner-Food Corporation of India.
3. By means of this writ petition, the petitioner challenges the award dated 23.09.2014, Annexure-7 to the writ petition.
4. According to the petitioner, the minimum wages, as determined by the State Government, not by the Central Government, would apply in respect of 13 personnel/workmen, as supplied by the contractor, engaged by the petitioner for maintaining security of their establishment.

5. It may be gainful, if we reproduce the relevant parts of the said order dated 23.09.2014, which are as follows:

“3. The applicant attended, OP No.2 attended, but the OP.1 did not attend 11.9.2014. The applicant prayed for ex-party hearing. The OP.2 admitted that they issued contract to OP.1 in the rate notified by the State Government towards payment of minimum wages. It is a fact that FCI is an organization clearly running under the authority of Govt. through Ministry of Consumer Affairs, Food and Public Distribution, therefore the Central Minimum Wages is applicable in the instant case.

4. The application was heard ex-parte and awarded the differential amount of Rs.5,88,796.00 towards claim amount with compensation of Rs.500/- to each workman of 13 workmen. The total claim amount and compensation is Rs.5,88,796.00 + 6500.00 Rs.5,95,296.00 is to be paid to the 13 workmen.

5. The OP.1 is advised to submit the Demand Draft in favour of Assistant Labour Commissioner (Central), Bhubaneswar disbursement of differential dues to the employees and submit same before the Labour Enforcement Officer (Central), Titlagarh.” [Emphasis added]

6. Mr. Das, learned counsel has submitted that, even in the tender notice dated 13.12.2011, the clause relating to the minimum wages was placed. It was mentioned therein that such minimum wages would mean, the minimum wages as has been determined by the State Government under the Minimum Wages Act, 1948.

7. After the settlement of the award, in several communications, the said clause has been repeated and referred by the petitioner.

8. In this writ petition, the challenge is based on only one point. It has been contended by the petitioner that since in the agreement and the communications made after awarding the contract, the minimum wages as payable by the contractor has been referred to be the minimum wages as settled with the State Government, only that would have been taken as the basis for determining the minimum wages for the workers engaged by the contractor. But in the impugned order dated 23.09.2014, the wage has been determined on the basis of the minimum wages as determined and declared by the Central Government Board.

9. According to Mr. Das, learned counsel, this part since stands contrary to the agreement, should be interfered with. He has also urged that, if the minimum wage as has been determined by the State Government is accepted by this Court, the compensation as directed to be paid cannot be sustained.

10. We, with all humility, cannot agree to that proposition of law. Let us refer to the provisions of Section-2(b) of the Minimum Wages Act, 1948, which defines *appropriate Government* in the following manner:

“2(b) “appropriate Government” means, -

- (i) *in relation to any scheduled employment carried on by or under the authority of the [Central*

Government or a railway administration], or in relation to a mine, oilfield or major port, or any corporation established by [a Central Act], the Central Government, and

(ii) in relation to any other scheduled employment, the [State Government];”

11. There cannot be any confusion. Above all, even the petitioner did not raise any controversy as regards who shall be treated as the employer. Under the agreement, the contractor is the employer, not the Food Corporation of India for any purpose. Hence, whatever the liability arises under the Statute or under the agreement, are to be solely borne by the contractor, as engaged by the Food Corporation of India.

12. On keen reading of Section-2(b) of the Minimum Wages Act, 1948, it surfaces unambiguously that the minimum wages as determined by the Central Government Board will be applicable in the case of the workmen working under the Food Corporation of India in as much as the petitioner is a Corporation established by a Central Act and by the Central Government.

13. Hence, there is no infirmity in the finding as recorded in the impugned order dated 23.09.2014, Annexure-7 to the writ petition. As the workmen were not being paid the minimum wages as per Section-2(6) of the Minimum Wages Act, 1948, they are entitled to

compensation. As such, no interference is called for in respect of the award of compensation also. On reading the contract entered between the contractor and the Food Corporation of India, for collateral purposes, we would record our observation that what will be the differential amount between the minimum wages under the Central Government and the minimum wages under the State Government shall be paid by the petitioner to the contractor for payment to the workmen.

14. Mr. Das, learned counsel, at this juncture, has categorically submitted that the differential amount, even though has been calculated, but not been paid as yet. Such amount shall be paid by the petitioner within six weeks from today.

15. Subject to the observation and direction as above, this writ petition stands dismissed.

16. There shall be no order as to cost.

(S. Talapatra)
Judge

(M.S. Sahoo)
Judge



