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W.P.No.25707 of 2013 and etc. batch.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.06.2023

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

W.P.Nos.25707, 24225, 25229, 25708, 25709, 25710, 25711, 8144, 28181,
25263, 25264, 25265, 25266 of 2013

and

W.P.Nos.22320 and 13037 of 2014
and W.M.P.No.4921 of 2016

and

W.P.Nos.7877, 30318, 30641, 30642 of 2015

In W.P.No.25707 of 2013 :

1.Shri K. Raghavendra

The Dy. Manager

Kotak Mahindra Bank Ltd.,

No.39, Montieh Road, Egmore,

Chennai. - 600 008.

2.Shri Raghavendra Naik, Asst.V.P.(HR)

Kotak Mahindra Bank Ltd.,

No.41, Ground Floor, Shree Essarar Tower,

T.Nagar, Chennai - 600 017. ...Petitioners.

Vs.

1.Regional Labour Commissioner (Central),

Chennai & Authority under the Minimum Wages Act, 1948,

Shastri Bhavan, No.26, Haddows Road,

Chennai - 600 006.

2.Smt.E.D.Shoba,

Labour Enforcement Officer (C)



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3. Shri Boobendra, Proprietor,
Multihands, No.244/239,
Sunmac Executive Centre,
Annasalai, Chennai - 600 006.

...Respondents.

Prayer in W.P.No.25707 of 2013 : Writ Petitions are filed under Article 226 of the Constitution of India, to issue writ of Certiorari to call for the records and to quash the impugned order dated 08.07.2013 pertaining to claim application 378 to 383 of 2012 passed by the 1st respondent.

For Petitioners

For Petitioners in W.P.Nos.24225, 25229,
28181 of 2013
& 13037 of 2014 : M/s.P.V.Rajeswari.

For Petitioners in W.P.Nos.25707,
25708, 25709, 25710, 25711, 25263,
25264, 25265, 25266 of 2013 : M/s.Varun Srinivasan for
M/s.N.V.S and Associates.

For Petitioner in W.P.No.8144 of 2013 : M/s.G.Anand Gopalan for
M/s.T.S.Gopalan and Co.

For Petitioner in W.P.No.22320 of 2014 : M/s.Akhil Bhansali for
M/s.BFS Legal.

For Petitioners in W.P.Nos.7877 : Mr.S.Ravindran
30318, 30641 & 30642 of 2015 : Senior Counsel
: for Mr.S.Bazeer Ahamed.



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For Respondents

For R1 & R2 :Mr.R.Rajesh Vivekananthan,
Deputy Solicitor General.

For R1 & R2 :Mr.J.Madanagopal in
W.P.No.24225/2013.

For R3 :Mr.Shivakumar and Suresh in
W.P.Nos.24225,
25229, 8144 of 2013.

R6 to R10, 12, 13, : No Appearance
15, 16 to 18.

R8, 9, 12, 15, 16, 17: No Appearance
18 and 19.

R4 to R7, 10, 11, 13, 14 : Not ready in notice.

R3 : No Appearance in W.P.No.22320 of 2014.

R3 & R4 :No Appearance in W.P.Nos.25263 to 25266 of
2013.

R3 & R4 : No Appearance.

R3 : No Appearance in W.P.No.28181 of 2013.

R3 & R4 :Mr.M.R.Raghavan in W.P.No.13037 of
2014.



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COMMON ORDER

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2. Section 2

.....

(b) "appropriate Government" means-

(i). In relation to any scheduled employment carried on by or under the authority of the Central Government.

(ii). Or a railway administration,

(c). Or in relation to mine,

(d). Oil field.

(e). major port.

(f). any other Corporation established by a Central Act, or the Central Government.

3. Insofar as the scheduled employments which are not covered by any



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of the aforesaid clauses are concerned, the "appropriate Government" under the Act is the State Government.

4. The petitioners in these cases are providing security services to Banks. Banks, which are not established by the Central Government, are corporate entities in themselves, over which, neither the State nor the Central Government have direct control. The Kotak Mahindra Bank, for example, is a private Bank and it is not established "by or under" the authority of the Central Government. The Bank obtains a licence from the RBI under the RBI Act, 1934, therefore, Kotak Mahindra Bank does not come under Clause (1) of 2 (a) of the said Act. Insofar as Vodafone is concerned, it is a private Telecom Industry and the same logic, which applies to a private corporate entity like Kotak Mahindra Bank, also applies to this institution also. The test words should be "by or under" the authority of the Central Government.

5. This condition having not been satisfied, these writ petitions have to succeed and accordingly they are allowed.

6. Now turning to the security staff provided by the petitioners in W.P.No.7877 of 2015 batch etc., they are also private employees who do not function under the authority of the Central Government. I would respectfully follow the judgment of this court in ***A.K.Ahmed & Co., Vs. Regional Labour***



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Commissioner (Central), Madras and Anr. 1994 LW 91. Merely because a

contract, which is entered into by the writ petitioners with an entity created by or under the authority of the Central Government, would not mean that the contractors themselves fall under that category. There has to be a difference between the principal employer, who is created "by or under" the authority of the Central Government and any other person carrying on a legitimate business with the said entity. It is at best "principal to principal" arrangement that the control of the employee continues to be with the contractors who, at times, may act on the directions of the principal employer, but that does not make them employees of the Central Government.

7. Mr.Rajesh Vivekananthan, learned Deputy Solicitor General of India, would bring to the notice of this court the judgment of the Bombay High Court in *A2Z Infraservices Ltd Vs. Union of India and 3 Ors.* (2018) 3 LLJ 363. He would argue that in case, the Court had directed the Railway Administration to pay the difference between the rate fixed by the Central Government with respect to the employees of the contractors who are sent to the Railway Administration for House Keeping Services, this judgment does not apply to the facts of the case before me. The issue in that case was the interpretation of a "price variation clause" in the contract. It does not deal



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with the situation as to what is the "appropriate Government" for the purpose of fixing liabilities on the parties. The same is the situation with respect to the other authorities cited by the learned Deputy Solicitor General of India in *Sanjay Kumar Vs. Authority under Minimum Wages Act and Labour Commissioner and Ors.* cited in *MANU/WB/3233/2019* and *Wajahat Hussain Vs. Union of India & Ors.* reported in *2018 SCC Online Calcutta 13159*. As both the judgments do not deal as to what is the appropriate Government for the purpose of the Act, they do not apply to the facts of the case. I hold that if the contractor is not created by the Parliament or does not act "by or under" the Authority of the Central Government, the appropriate authority insofar as the said contractor is concerned is only the State Government. Consequently, all the writ petitions have to be allowed and accordingly they are allowed.

8. There are yet another category of persons in W.P.Nos.22320 of 2014 and 25207 of 2013. Insofar as the House Keeping Contractors providing House Keeping Services to Kotak Mahindra Bank and Vodafone Telecom, the logic which applies to providers of security service applies to these petitioners also. They are not functioning "by or under" the authority of the Central Government in discharge of their duties. It is only a contractual



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employment and therefore, these writ petitions also have to succeed. The writ petitions stand allowed. No costs. Connected Miscellaneous Petitions are also closed.

13.06.2023

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Index : Yes/No
Speaking : Yes/No
Neutral Citation Case : Yes/No

V.LAKSHMINARAYANAN,J

nst

To:

Regional Labour Commissioner (Central),
Chennai & Authority under the Minimum Wages Act, 1948,
Shastri Bhavan, No.26, Haddows Road,
Chennai - 600 006.

W.P.Nos.25707 of 2013 etc., batch cases



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