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W.P.Nos.38730 & 38731 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

W.P.Nos.38730 & 38731 of 2016

and

W.M.P.Nos.33186 & 33187 of 2016

M/s.Sail Refractory Company Ltd.,
Salem,
Rep. by its Chief Operating Officer

... Petitioner in both WPs

Vs.

- 1.Union of India,
Rep. by its Secretary,
Ministry of Labour and Employment,
Shram Shakti Bhawan, Rafi Marg,
New Delhi – 110 001.
- 2.The Regional Labour Commissioner (Central),
Authority under the Minimum Wages Act, 1948,
No.26, Haddows Road, Shastri Bhavan,
Chennai – 600 006.
- 3.The Labour Enforcement Officer (Central),
SA/31, Railway East Colony,
Sooramangalam Post, Salem – 636 005.
- 4.General Secretary,
Salem District Magnesite Pattali Thozilalar Sangam,
Mamangam, Keel Board (Via),
Salem – 636 302.



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5.M/s.Hindustan Steelworks Construction Ltd.,
No.24, Garment Complex, SIDCO Industrial Estate,
Chennai – 600 032.

... Respondents in
W.P.No.38730 of 2016

1.The Regional Labour Commissioner (Central),
Authority under the Minimum Wages Act,
Chennai.

2.The Labour Enforcement Officer (Central),
SA/31, Railway East Colony,
Sooramangalam Post, Salem.

3.General Secretary,
Salem District Magnesite Pattali Thozilalar Sangam,
Arabic College Buildings,
Velakalapatti,
Salem – 636 102.

4.M/s.Hindustan Steelworks Construction Ltd.,
No.24, Garment Complex, SIDCO Industrial Estate,
Chennai – 600 032.

... Respondents in
W.P.No.38731 of 2016

Prayer in W.P.No.38730 of 2016 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records connected with impugned notification bearing S.O.No.1286(E) dated 20.05.2009 issued by the 1st respondent/Ministry of Labour and Employment, Government of India and quash the same insofar as the condition directing the 4th respondent to make the payment by claiming from the petitioner.



W.P.Nos.38730 & 38731 of 2016

Prayer in W.P.No.38731 of 2016 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records connected with impugned order dated 27.02.2016 made in Claim Application No.M.39/MWA/33/2014 on the file of 1st respondent, Regional Labour Commissioner (Central), Chennai, Authority under the Minimum Wages Act and quash the same.

For Petitioner : Mr.R.S.Shivathanu Mohan
(in both WPs) for Ms.S.Ramasubramaniam
Associates

For Respondents : Mr.Venkataswamy Babu
[R1 to R3 in W.P.No.38730 of
2016 & R1 & R2 in
W.P.No.38731 of 2016]

Mr.G.Pugazhenth
[R4 in W.P.No.38730 of 2016 &
R3 in W.P.No.38731 of 2016]

Mr.Prasad Vijayakumar
[R5 in W.P.No.38730 of 2016 &
R4 in W.P.No.38731 of 2016]

COMMON ORDER

Since the issue involved in both the writ petitions being one and the same, with the consent of the learned counsel appearing for both sides, these writ petitions are heard together and disposed of by this common order.



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2. The case of the petitioner is that, it is a public sector undertaking registered under the Companies Act, 1956 and engaged in the business of excavating magnesite minerals from the mines owned by the petitioner at Jagir Ammapalayam, Karuppur and Red Hills areas and processing the same at their factory for manufacture of various refractory products. The petitioner is 100% subsidiary of Steel Authority of India Ltd under the administrative Ministry of Steel. The petitioner has obtained valid permission from the Director of Mines Safety, Oorgaum Region, Oorgaum on 07.03.1969 and the same is renewed from time to time under Regulation 106(2)(b) of Metalliferous Mines Regulations, 1961.

2.1. The fourth respondent in W.P.No.38730 of 2016 was one of the contractors engaged by the petitioner to carry out the mining activities which are done at surface of the earth in the petitioner's mines subject to availability of work. Accordingly, the petitioner and the said respondent entered into the Contract No.530012 dated 07.05.2013, wherein, it has been clearly stated that the workers are to be paid in accordance with the Minimum Wages Act, 1948 (in short 'the MW Act') and the liability for implementing the provisions of MW Act and all other statutory provisions



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were specifically assigned to the said respondent. However, the employees of the said respondent claimed that the minimum wages was not paid to them, thereby, they raised disputes before the authority under MW Act claiming wages on par with MW Act, which was allowed by the authority, namely the Regional Labour Commissioner (Central), Chennai. Challenging the same, the petitioner filed W.P.No.38731 of 2016 before this Court and challenging the minimum wages revised in the notification, dated 20.05.2009, the petitioner filed another writ petition in W.P.No.38730 of 2016.

3. The learned counsel for the petitioner submits that, as on date, the impugned notification bearing S.O.No.1286(E) dated 20.05.2009 issued by the Ministry of Labour and Employment, Government of India, was not quashed by any the High Courts and the same is intact. Though the petitioner filed writ petition challenging the notification issued by the Central Government for revising the minimum wages, however, when this Court not interfered with the said minimum wages notification, then the petitioner has to pay the minimum wages as per the notification. To that extent, the impugned order cannot be interfered with. However, this Court



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may grant liberty to the petitioner to recover the amount from the fourth respondent in W.P.No.38730 of 2018, if any excess amount is paid by the petitioner to the said respondent.

4. The learned counsel appearing for the fourth respondent in W.P.No.38730 of 2016 submits that, this respondent entered a contract with the petitioner on 07.05.2013 and as per the contract, they have to supply manpower to the petitioner for excavation work above the earth and below the earth, for which, minimum wages was clearly notified the entitlement of the wages to the workmen. In the present case, they supplied the manpower for above the earth, however, the petitioner extracted work from the workmen supplied by this respondent below the earth. To that extent, the petitioner has to pay the amount to this respondent. Any way, that is a separate issue, which has to be adjudicated in the separate forum and not in these writ petitions.

5. In response, the learned counsel appearing for the petitioner submits that, as per the order of this Court, the amount awarded by the Labour Court was deposited before the Labour Court, however, liberty may



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be granted to the petitioner to recover the excess amount, if any, paid to the fourth respondent in W.P.No.38730 of 2016 in the manner known to law.

6. Heard the learned counsel for the parties and perused the materials available on records.

7. Admittedly, the fourth respondent/Union in W.P.No.38730 of 2016 supplied manpower to the petitioner for excavating the mining activities above the earth and below the earth. Though there was a dispute with regard to the work extracted by the petitioner, however, the issue arises is whether the petitioner extracted the work from the workmen supplied by the Union, above or below the earth. That issue has to be decided only before the competent authority in between the petitioner and the said respondent. Thereby, the Union raised a claim on behalf of their workmen before the authority under the MW Act as if they received less than the minimum wages as per the notification, dated 20.05.2009 and the authority under the MW Act elaborately considered the issue and ordered for payment on par with notification issued by the Central Government, which cannot be interfered with. To that extent, the learned counsel appearing for the



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petitioner and the Union fairly conceded that, they are entitled for wages on par with notification issued by the Central Government. Therefore, this Court is not inclined to interfere with the impugned order dated 27.02.2016 passed in Claim Application No.M.39/MWA/33/2014.

8. Now, coming to the other issue with regard to the challenge made by the petitioner against the notification dated 20.05.2009 issued by the Central Government. A perusal of the affidavit filed by the petitioner, reveals that, it did not disclose any of the grounds available for interfering with the notification issued by the Ministry of Labour and Employment. The Ministry of Labour and Employment, in terms of 3(1)(a) read with clause 4(2)(i)(1), they exercised its power based on the consultation with the Advisory Board and fixing the minimum rates of wages applicable to the employees employed by the schedule of employment. When no material has been placed before this Court to infer otherwise about the notification issued, it is incumbent on the petitioner to pay the minimum wages as per the notification and the said notification cannot be aid to be arbitrary, unreasonable or illegal. This Court is not satisfied with the grounds raised by the petitioner and therefore, this Court is not inclined to interfere with the



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notification, dated 20.05.2009 issued by the Ministry of Labour and Employment.

9. However, liberty is granted to the petitioner to work out the remedy in accordance with law. Further, the Regional Labour Commissioner (Central) Chennai is directed to disburse the minimum wages which is held in deposit to the respective workmen after satisfaction of their identity.

10. In the result, both the writ petitions are dismissed with the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

25.07.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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M.DHANDAPANI, J.

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To



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