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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2024

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P.No.3161 of 2012
and M.P.No.1 & 2 of 2012

1. M/s.Updater Services (P) Ltd.,
   No.7, Sakthi Garden, D.B.Jain College Hostel Road,
   Off: Old Mahabalipuram Road, Thoraipakkam,
   Chennai – 600 096,
   rep. by its Managing Director.

2. M/s.Updater Services (P) Ltd.,
   No.7, Sakthi Garden, D.B.Jain College Hostel Road,
   Off: Old Mahabalipuram Road, Thoraipakkam,
   Chennai – 600 096,
   rep. by its Area Manager. ... Petitioners

Vs.

1. The Labour Enforcement Officer (Central)-V,
   No.26, Haddows Road, Shastri Bhavan,
   Nungambakkam, Chennai – 600 006.

2. The Regional Labour Commissioner (Central)
   No.26, Haddows Road, Shastri Bhavan,
   Nungambakkam, Chennai – 600 006.

3. The Chief Commissioner of Income Tax,
   Income Tax Office,
   Mahatma Gandhi Road,
   Nungambakkam, Chennai.

4. S.Ambika ... Respondents

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(R4 impleaded as per order dated 17.02.2012 by KCJ in M.P.No.2 of 2012 in W.P.No.3161 of 2012)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of the second respondent in MW Claim Application Nos.223 to 226/2011 pursuant to the proceedings of the first respondent dated 28.07.20211 and quash the same.

For Petitioner	:	Mr.Anand Gopalan
For Respondent	:	Mr.Vijay Shankar for R1 to R3

ORDER

Heard Mr.Anand Gopalan, the learned counsel for the Petitioner and Mr.Vijay Shankar, the learned counsel for R1 to R3.

2. This writ petition has been filed challenging the proceedings before the second respondent in pursuant to the application filed by the first respondent in MW Claim Application Nos.223 to 226/2011.

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3. The petitioners are the man power supply agency and providing man power to the Income Tax Department. The first respondent has made a demand stating that the petitioners are obliged to pay minimum wages as per the Central Government Notification in view of its agreement with the Central Government Agency namely the Income Tax Department.

4. Mr.Anand Gopalan, the learned counsel for the petitioners, submitted that the petitioner company is very much a company registered under the Tamil Nadu Shops and Commerce Establishments Act. Hence, the petitioners are obliged to follow the minimum wages as notified by the State Government and the authority under the State Government has the jurisdiction to demand that the petitioners should pay minimum wages in accordance with the State Government notifications in this regard.

5. Attention was drawn to the judgment of the Hon'ble Supreme Court held in ***Lingegowd Detective & Security Chamber Pvt. Ltd., Vs. Mysore Kirloskar Ltd., and others reported in 2006 II LLJ 762*** wherein a similar issue came for consideration and in which the Hon'ble Supreme Court has referred the earlier judgment and held that the appropriate authority of the employer is relevant and not the place where the work is carried out.

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6. It is also relevant to refer the judgment of this Court in ***A.K.Ahmed & Co.,Vs. Regional Labour Commissioner (Central), Madras and another reported in 1994 LW 91*** wherein it is clarified that merely because the contract which is entered into by the petitioners with an entity created by the authority of the Central Government, that will not mean that the contractors themselves should fall under the 'Central Government' category. In fact the earlier judgment of this Court held in W.P.No.25707 of 2013 & batch dated 13.06.2023, the very same judgment is quoted for deriving the principle that the contract created by any entity covered under the state legislation cannot be construed as an entity created on the authority with whom they entered into agreement for rendering any services. In this regard it is relevant to extract the relevant paragraphs of the judgment:

> *"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 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*

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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 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

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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."

7. Since the petitioner company is registered under Tamil Nadu Shops and Establishments Act and it is covered under the State Legislation, they are expected to follow the minimum wage standards followed in the State of Tamil Nadu and not the minimum wage notification issued by the Central Government just because there was some contractual obligation with the Central Government Agencies.

8. With the above observation, this writ petition is disposed. No costs. Connected miscellaneous petitions are closed.

30.08.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order
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R.N.MANJULA, J.

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