



2024 : DHC : 3607



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 7th February, 2024**

Pronounced on: 6th May, 2024

+ **W.P.(C) 2662/2018, CM APPL. 10859/2018 & 10861/2018**

DELHI MSW SOLUTIONS LIMITED (DMSWSL) Petitioner

**Through: Mr.Raj Shekhar Rao, Senior
Advocate with Mr.Matrugupta
Mishra, Mr.Nipun dave and
Ms.Sonakshi, Advocates**

versus

THE DEPUTY LABOUR COMMISSIONER (CENTRAL) &

ORS

..... Respondents

**Through: Mr.Divyam Nandrajog, Panel
counsel for GNCTD.**

Mr.M. Hussain, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition under Articles 226 read with Article 227 of the Constitution of India has been filed on behalf of the petitioner seeking quashing of the impugned order dated 23rd May, 2017 passed by the learned Deputy Chief Labour Commissioner (Central), New Delhi in Claim bearing no. ND-20(01)/2017-PP.DYC under the provisions of the Contract Labour (Regulation & Abolition) Act, 1970.

FACTUAL MATRIX

2. On 17th July, 2009, the petitioner, i.e, Delhi MSW Solutions Limited and respondent no. 3, i.e., the North MCD had entered into a Concession Agreement in respect of the BQT project for construction of a



sanitary landfill facility for collection, transportation and disposal of the municipal solid waste for the areas covered under the Agreement.

3. Under Section 7(2) of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter “the Act”), a Registration Certificate bearing No. ALC-II/46(14)/2010-R was issued to the petitioner on 10th May, 2010, by the Ministry of Labour which allowed them to employ 400 or more contract labourers.

4. Thereafter, the petitioner commissioned an integrated Municipal Solid Waste Management Plant along with a Waste to Energy Plant having capacity of 24 MW. Subsequently, the petitioner company started collecting Municipal Solid Waste (hereinafter “MSW”) from Civil Lines, Rohini, Vasant Kunj and Dwarka-Pappankalan Zones, and started processing the same in an eco friendly and scientific manner.

5. On 16th October, 2015, the respondent no. 2 (workers union of the petitioner’s company) filed an application before the Assistant Labour Commissioner on behalf of the contract workers employed by the petitioner company claiming wages and other benefits equivalent to the wages and other benefits available to the regular employees of the respondent no. 3, i.e., the Commissioner, North MCD doing similar work. The said application was transferred to the learned Deputy Labour Commissioner (Central) for adjudication vide order dated 16th September, 2016.

6. On 23rd May, 2017, the impugned order was passed by the learned Deputy Chief Labour Commissioner (Central) holding that the workmen affiliated with the respondent no. 2/union are entitled to the same wages rates, holidays, hours of work and other conditions of service as are



applicable to the workmen directly employed by respondent no. 3 since they are performing similar work.

7. Pursuant to the above, on 15th November, 2017, a demand notice was issued to the petitioner by the workers' union seeking recovery of Rs.2,13,23,608/-, i.e., the amount claimed by calculating the difference in salaries for works done during the period of November, 2015 to June 2017.

8. Being aggrieved by the impugned order dated 23rd May, 2017, the petitioner has filed the instant petition seeking quashing of the same.

PLEADINGS

9. The petitioner has filed the instant petition on 26th February, 2018 challenging the impugned order on following grounds:

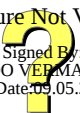
"..A. It is submitted that the Petitioner is an "Establishment" within the meaning of Section 2(e) of the Act and is the "Principal Employer" within the meaning of Section 2(g) of the Act qua the workers employed by it in its establishment. Fortifying this legal and factual position, the Company further submits that no License in terms of Section 13 of the Act has ever been granted to the Company, nor it ever operate under such License. As a matter of fact, the Company has registered with the Labour Department under Section 7 of the Act and obtained a Labour Registration No. being ALCB. I/46(14)/2010-R in the capacity of the principal employer of the "establishment"; and ever since the execution of the Concession Agreement, the Company has been employing the workers in its establishment in the said capacity, it is submitted that the Company being a registered entity in terms of Section 7 of the Act and in the absence of License under Section 13 of the Act), cannot be treated as a 'contractor' within the meaning of Section 2(c) of the Act. The Company is a separate establishment in regard to its status and legal relationship with its employees.



C. Because, the Respondent erred in passing the impugned order in as much as it failed to take in to account the law laid down by the Hon'ble Supreme Court while construing the provisions of Rule 25(2)(v)(a) of the Rules. The provisions of the Rules ought not to have been interpreted and implemented in completely negating the "limitations" casted upon by the Hon'ble Supreme Court to the principles of "equal pay for equal work".....

F. It is submitted that the Legal Demand Notice dated 15.11.2017 served by Respondent No. 2- Delhi MSW Solutions Ltd, Workers Union is the demand for equal wages for equal work. Means the payment to the drivers and helpers engaged under the said project at par with the wages of North DMC employees/ drivers whereas the employees of the Petitioner are being employed by the Company in its Roll and in its own establishments at different locations, and not in any of the North DMC's establishment.

G. It is submitted that as long as an employer follows the minimum wage structure provided in Minimum Wages Act, 1948 (as amended from time to time), such structure cannot be adversely interfered to equate the said wage structure to that of another entity's wage structure. Thus, in the present case, since the Company follows the minimum wage structure as provided in the Minimum Wages Act, 1948 as amended by the aforementioned Notification and as required under the Concession Agreement dated 17.07.2009 as entered with the erstwhile Municipal Corporation of Delhi (now named as North DMC), cannot be directed to pay the wages equal to the wage prevail in North DMC. Also, pursuant to Clause 1.17.1 and 1.26.(d) to the Concession Agreement dated 17th July 2009, Concessionaire's employees has to be covered under all relevant labour laws prevailing in the state of Delhi and in India, especially the Minimum Wages Act, the Contract Labour Act 1970 etc. The said covenant of the said Agreement also makes it abundantly





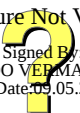
clear that the workmen employed by the Petitioner are the workmen of the Petitioner alone and it has to comply the applicable laws and the Petitioner has been complying the same. Therefore, the impugned order was passed on a wrong premise of fact that the petitioner is not the principal employer. Such premise goes to the root of the matter and vitiate the entire order assailed under this writ petition, since no judicial or executive order can stand on wrong application of the provisions of law.

H. Because the Concession Agreement dated 17.07.2009 was formulated on the basis of a global tender called by erstwhile Municipal Corporation of Delhi for providing waste management services in selected zones of Delhi. it is submitted that the criteria for selection of the successful bidder in the said bid was on the basis of technical capabilities of the bidder in municipal solid waste handling as well as the lowest rate quoted by the aid bidder. While quoting the tipping fee, the bidder quoted the rate on 'per-ton' basis while considering the various cost parameters like wages, fuel, maintenance etc. along with the minimum wages applicable in the State of NCT of Delhi. Therefore, the tipping fee as reflects under the Concession Agreement is an outcome of various factors including but not limited to the then existing minimum wages alongwith factoring of escalation. The above fact further gets clarified with reference to the rate of escalation in tipping fee @ 3.5% per annum, which number was arrived at after taking into consideration the periodic escalation in various cost parameters including minimum wages. However, it was never anticipated that the successful bidder will have to pay wages at par with the wages being paid by North DMC to their employees performing similar functions. Because the rule of law, inhibits arbitrary action and also makes it liable to be invalidated. Every action of the state or its instrumentalities ought to be fair, legitimate, and rational, and should be without any affection or version. It should neither be suggestive of discrimination nor even give an



impression of bias. Procedural fairness is an implied mandatory requirement to protect against arbitrary action where statute confers wide power coupled with wide discretion on an authority. If the procedure adopted by an authority offends the fundamental fairness or established ethos or shocks the conscience, the order stands vitiated and the decision-making process remains bad.

J. Because the impugned order, unless set aside by this Hon'ble court, the same would render the financial and operational viability of the Petitioner company, otiose. The indulgence of this Hon'ble court is sought by the Petitioner to have a holistic perspective of not only the issue of arbitrariness of the impugned order, but also the far reaching consequential effect of the impugned order. This Hon'ble High Court may take judicial cognizance of the fact that the failure of state mechanism in the form of Municipal Corporations to manage and dispose of municipal solid waste generated in Delhi, have paved the path towards a paradigm shift in the legislative policy which gave birth to the concept of participation of private parties in disposal of municipal solid waste through scientific and efficacious means. The private parties are selected through a competitive bidding process, whereby the successful bidder was chosen by the concerned Municipal Corporation after fulfilment of the criterias provided under the bid documents along with the L-1 parameters. Therefore, unless the prayers sought hereunder are allowed in favour of the Petitioner, it is not only the Petitioner company which is going to suffer financially, rather the entire mechanism in place for door to door collection to disposal of the municipal solid waste in the entire Concession region, shall be distorted thereby denying the right to life of each and every individual residing within the command area identified and allocated to the Petitioner under the Concession Agreement. Further, subsistence of the impugned order in operation, may lead to disastrous consequences in other municipal corporation areas, since the unions in those areas would also demand a





parity with that of the workers working within the municipal area of North Delhi Municipal Corporation. It may not be out of place to mention herein that all other Public Private Partnership projects (PPP) in municipal solid waste handling will become unviable as all the projects are based on the tipping fee considering the minimum wages factoring the escalation of the same. Therefore, it is the call of the hour to annul the arbitrary and unreasonable order passed. Even the minimum wages paid by the Petitioner after the revision of the minimum wages, is itself burdensome on the Petitioner and its financial model on the basis of which had participated in the bid. Having said that, the impugned order is further pushing the Petitioner to the all by subjecting the financials and operational viability of the Petitioner to an insurmountable burden..."

10. In response to the instant petition, the respondent no. 2 has filed counter affidavit dated 27th October, 2018, relevant portions of which are reproduced herein below:

"...1. The contents of Para 1 are wrong and denied. It is submitted that there is no error in the impugned order dated 23-5-2017 passed by Ld. Deputy Labour Commissioner (central) and the same is legally valid and is not suffering from any arbitrariness or flaw, and the same is liable to be upheld.

6. The contents of Para 6 are also matter of record to some extent but it is denied that strict adherence of all applicable laws including the labour and welfare legislations, rules, regulations, guidelines etc., and in particular, the provisions of the Minimum Wages Act, 1948, Contract Labour (Regulation & Abolition) Act, 1970 (hereinafter referred to as the "Act") etc., is one of the core operating policy of the company, as the real facts are other way round and the petitioner management misses no occasion to violate and



bypass the labour laws. The sole motto of the petitioner is to exploit the workmen employed by them.

10. In reply to Para 10 it is submitted that the matter had been finally heard on 4-5-2017 and Ld. Deputy Commissioner (central) had passed the impugned order and held that the contract workers employed by the contractor M/S Delhi MSW Solutions Ltd. in the establishment of principal employer are entitled to the same wage rates, holidays, hours of work and other conditions of service as are applicable to workmen directly employed by the North Delhi Municipal Corporation for all the categories of HMV/LMV Drivers, Helpers etc., as claimed by the Applicant Union.

H. The contents of Para H are wrong and denied and it is reiterated that the workmen of the Respondent No.2 Union, are entitled to parity with those of Municipal Corporation.

I. The contents of Para I are also wrong and denied. It is submitted that the Respondent No.1, Authority under the Contract Labour{regulation & Abolition) Act,1970 is a judicial forum and it has acted with fairness and as per rules laid down in the aforesaid Act. Hence the award

I. The contents of Para J are also wrong and denied. The assed by it is good in the eyes of law. Petitioner cannot be allowed to exploit the workmen after the aforesaid judgement of Supreme Court in Civil Appeal No. 213/2013 titled State of Punjab & ors. Vs. Jagjit Singh & ors. Wherein it has been clearly laid down in Para 57 that "Having traversed the legal parameter with reference to the application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this court), were rendering similar duties



and responsibilities, as being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle 'equal pay for equal work' summarized by us in paragraph 42 above""

11. The additional affidavit to bring on record additional documents dated 10th November, 2020 filed on behalf of the petitioner as well as the written submissions dated 3rd November, 2002 filed on behalf of the petitioner including the brief note of submissions dated 18th November, 2019 filed on behalf of the respondent no. 2 is also on record.

SUBMISSIONS

(submissions on behalf of the petitioner)

12. Mr. Raj Shekhar Rao, learned senior counsel appearing on behalf of the petitioner submitted that the impugned order passed by the learned Deputy Chief Labour Commissioner (Central) is bad in law since the same has been passed without taking into consideration the entire facts and circumstances of the case.

13. It is submitted that the directions passed in the impugned order is erroneous and based on the assumptions that the petitioner herein is the contractor and respondent no. 3 is the "principal employer". The said finding is bad in law due to the fact that the petitioner ought to have been termed as 'principal employer'.

14. It is further submitted that learned Deputy Chief Labour Commissioner (Central), i.e., the respondent no. 1 overlooked the fact that the petitioner is merely a concessionaire under the Concession Agreement dated 17th July, 2009 and is an establishment in itself within



the meaning of the Act, 1970 and thus, a principal employer in terms of Section 2(g) of the Act, 1970.

15. It is further submitted that the petitioner being the principal employer *qua* the workmen employed by it also holds registration in terms of Section 7 of the Act, 1970 as well as a certificate in Form II of the Contract Labour (Regulation and Abolition) Central Rules, 1971 (“the Rules”) and the said facts have been erroneously overlooked by the learned Deputy Chief Labour Commissioner (Central).

16. It is submitted that the impugned order has been passed by misconstruing the law laid by the Hon’ble Supreme Court in the case of ***State of Punjab v. Jagjit Singh***¹ which lays down the principle of ‘equal pay for equal work’.

17. It is submitted that in the case of ***Jagjit Singh (Supra)***, the Hon’ble Supreme Court has observed that the comparison between the subject post and the reference post, under the principle of equal pay for equal work cannot be made, where the subject post and reference post are in different establishments, having a different management. Further, it has been also observed by the Hon’ble Court that there is no comparison between one set of employees of one organization, and another set of employees of another organization, and therefore, there can be no question of equation of pay-scales, under the principle “equal pay for equal work”, even if two organizations have a common employer.

18. It is submitted that whilst passing the impugned order, the learned Deputy Chief Labour Commissioner (Central) failed to appreciate the fact that the “subject post” (with the petitioner’s establishment) and the

¹(2017) 1 SCC 148



“reference post” (with the respondent no. 3’s establishment) have independent control and management. Thus, there is no comparison of the subject post to that of the reference post in regard to the applicability of principle of equal pay for equal work.

19. It is further submitted that the observations of the Hon’ble Supreme Court in *Jagjit Singh (Supra)* are sufficient to demonstrate that the principle “equal pay for equal work” cannot be applied to the petitioner and its workmen in comparison to the employees of the respondent no. 3 in the instant case. Since the ‘subject post’ and the ‘reference post’ in the present case have different establishments and there is independent control and management, therefore, one cannot be compared with the other. It is submitted that it is the respondent no. 3 who exercises control over the employees in the present case and not the petitioner.

20. Learned senior counsel for the petitioner submitted that impugned order has been passed under the misconceived assumption that the workers affiliated to workmen union were contractual labor employed by the petitioner in its capacity as a contractor at the establishment of the respondent no. 3.

21. It is submitted that the learned Deputy Chief Labour Commissioner (Central) has erroneously placed reliance upon Rule 25(2)(v)(a) of the Rules which states that the wage and other benefits of the contractual labour will be same as applicable to the workmen directly employed by the principal employer.

22. It is submitted that the respondent no. 1 erred while passing the impugned order on the misconceived premise that the petitioner is a



licensee in terms of Section 13 of the Act, despite the fact that the petitioner is yet to be granted a license under Section 13 of the Act.

23. It is submitted that as per Clauses 1.17.1, 1.26.(d) and 1.28 of the Concession Agreement, the Concessionaire shall be compliant with the various labour laws, rules and regulations prevailing in Delhi and in India, and specifically those pertaining to the Minimum Wages Act, 1948, the Act, 1970, etc.

24. It is further submitted that the petitioner has always been compliant with the minimum wage structure provided in Minimum Wages Act, 1948. The aforesaid covenants of the said Concession Agreement make it abundantly clear that the workmen employed for the purpose of carrying out the scope of works under the Agreement are being employed by the petitioner in its own capacity thus the petitioner is the principal employer.

25. It is submitted that the petitioner currently employs around 1400 workmen with total calculated wages of more than Rs.1.85 Crores. It is also submitted that in case the impugned order is implemented, the same would result in an exponential increase in the operational cost of the petitioner, rendering the project financially unviable thus, prejudicing public health since the petitioner is engaged in the business of processing MSW in the city.

26. It is further submitted that the demand notice for payment of wages received by the petitioner on behalf of the respondent no. 2 being the workers' union of the petitioner company to the tune of Rs.2,13,23,608/- along with recovery of Rs.20,000/- with each notice on account of various facilities, have been raised in complete misconstruction of the



facts of the present case and erroneous application of the decision of the Hon'ble Supreme Court in the case of ***Jagjit Singh (Supra)***.

27. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and the reliefs be granted as prayed for.

(submissions on behalf of the respondents)

28. Learned counsel appearing on behalf of the respondents vehemently opposed the instant petition submitting to the effect that the same being devoid of any merit is liable to be dismissed.

29. It is submitted that there is no illegality or error in the impugned order passed by the respondent no. 1 and the same has been passed after taking into consideration the entire facts and circumstances of the case, and the instant petition filed by the petitioner is nothing but a gross misuse of process of law and thus, is liable to be dismissed.

30. It is submitted that the petitioner has taken quite a different stand in the instant petition than the stand, it took before the learned Deputy Chief Labour Commissioner (Central) where it had filed reply to the statement of claim stating that he did not deny the fact that the members of the workmen union, i.e. respondent no. 2 were not employed by the petitioner. Hence, the petitioner is trying to make out a different case before this Court.

31. Learned counsel submitted that there is no force in the argument of the petitioner that the impugned order has been passed by misconstruing the law laid down by the Hon'ble Supreme Court in the case of ***Jagjit Singh (Supra)***. It is submitted that the learned Deputy Chief Labour Commissioner (Central) under the Act, 1970 has correctly applied the



said law on the facts of the present case and therefore, the same does not suffer from any kind of perversity.

32. It is vehemently denied that the petitioner strictly adhered to all the applicable laws including the labour and welfare legislations, rules, regulations, guidelines etc., and especially, the provisions of the Minimum Wages Act, 1948, the Act, 1970 etc. is one of the core operating policy of the company, as the petitioner-management leaves no occasion to violate and bypass the labour laws. It is further submitted that the sole motto of the petitioner is to exploit the workmen employed by them.

33. Learned counsel appearing on behalf of the respondents submitted that the contractors, if any, engaged by the petitioner must be treated as sham contractors.

34. It is further submitted that the petitioner has contended in the reply filed by it before the learned Deputy Chief Labour Commissioner (Central) that the workmen are the employees of Delhi MSW Solutions Ltd. and they are paid by it. The petitioner has stated varied facts before the respondent no. 1 and now stating different facts before this Court. However, it does not make any difference as the principle “equal pay for equal work” applies to the instant case in any eventuality and the petitioner cannot escape from its responsibility to pay the same.

35. It is submitted that the respondent no. 3 is the main employer and the petitioner is its contractor, however, it is camouflaging the relation by stating that it is the principal employer and that it had appointed contractors who had engaged the contract labour. It is submitted that the said contention of the petitioner is not a correct statement and in any case



the workmen represented by the respondent no. 2, i.e., Union, cannot be deprived of their legal rights and they deserve protection under the law.

36. Learned counsel appearing on behalf of the respondents submitted that the petitioner has deployed the workmen in the establishment of the respondent no. 3 in different capacities such as drivers, loaders and helpers etc. since the year 2009 for the purpose of collecting the municipal solid waste from different locations. In the statement of claim filed by the respondent no. 2 i.e. the Union, on behalf of the workmen, it was submitted that they were performing same and similar work as that of the workmen engaged directly by the respondent no. 3, however, they are being paid wages lesser than that what is being paid to their counterparts working at the respondent no. 3 and that the same is violative to the principle “equal pay for equal work”.

37. It is submitted that it was categorically mentioned in the workmen’s statement of claim that they were receiving Rs.10,998/- per month which was minimum wages at that point of time whereas the regular workmen engaged with the respondent no. 3 were receiving Rs.22,000/- to 35,000/- per month which was clearly discriminatory against them.

38. It is further submitted that it is crystal clear that it was the petitioner who was the employer and was paying to the employees their dues and remuneration and PF etc. and there was not any averment to the effect that the petitioner was not the employer of the workmen on whose behalf the application had been filed by the respondent no. 2 before the respondent no.1. Now, at this stage, the petitioner is wrongfully attempting to improve its case and trying to establish that it is not the



contractor rather the principal employer, whereas from the perusal of the Annexure P-3 appended to the instant writ petition, it appears that for the purpose of the Act, MCD is only the principal employer and the petitioner is a contractor.

39. It is submitted that as per paragraph no.1.16 of the above said Concession Agreement, subcontractors are not allowed under this Contract to the bidder except of appointment of consultants/advisor etc. Further, as per paragraph no. 1.17.1 of the aforesaid agreement, it is the bidder who shall comply with all the provisions of the laws regarding deployment of the labourers under the Contract and to implement the various laws enacted for the welfare of the labourers.

40. Learned counsel for the respondents submitted that in view of the afore stated Concession Agreement, the petitioner is a contractor as the same appears from the interpretation of the said agreement at paragraph no.1.16 onwards and is within the purview of the Act, 1970, therefore, the impugned order does not suffer from any error and illegality and is in conformity with the judgment of the Hon'ble Supreme Court in the case of *Jagjit Singh (Supra)*.

41. It submitted that it is a settled law that the principle "equal pay for equal work" is duly applicable to those who are engaged as daily wagers, casual and contractual employees and who perform the same duties as the regulars and the denial of "equal pay for equal work" amounts to "exploitive enslavement" and the same has been held by the Hon'ble Supreme Court in a catena of judgments.

42. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be dismissed.



ANALYSIS AND FINDINGS

43. The matter was heard at length with arguments advanced by the learned counsel on both sides. This Court has also perused the entire material on record. This Court has duly considered the factual scenario of the matter, judicial pronouncements relied on by the parties and pleadings presented by the learned counsel for the parties.

44. For ready reference, certain clauses of the above mentioned Concession Agreement are reproduced hereinbelow:

“...1.16 Infrastructure & Facilities - Role of the Successful Bidder and that of MCD for the project Performance of the Contract and Achieving Desired Results

a) Sub Contracts: The Bidder/Contractor shall note that sub contracts are not allowed under this contract awarded to the bidder, except appointment of consultants/ advisor as indicated in the tender document. The contractor may obtain support for maintenance services for vehicles etc. from outside (the work shop shall be set up by the bidder), authorized agencies of the manufacturer or other reputed agencies for the work.

b) Assignment and Subletting: The contractor shall not enter into partnership or sublet, transfer, assign the work or any part thereof in any manner whatsoever to any other individual or company/ firm. In the event of the contractor/s contravening this condition, the Commissioner shall be entitled to terminate the contract. The contractor shall then be liable to pay for any loss or damage, which MCD may sustain in consequence arising there from.

c) The successful bidder/contractor shall not, without Municipal Corporation of Delhi's prior written permission disclose the contract or any provision there of or information furnished by or on behalf of the Municipal Corporation of Delhi in connection therewith, to any person



other than a person employed or their consultants appointed by the contractor in performance of the contract,

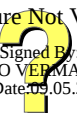
d) Disclosure to any such employed person/consultants shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

e) The contractor shall not without the Municipal Corporation of Delhi's prior written permission, make use of any document or information enumerated except for purpose of performing the contract.

f) A copy of the operational documents including performance reports generated during the contract shall be handed over to the Municipal Corporation of Delhi and shall not be parted to any outsider even on completion of the contract.

g) Supervision, inspection and control

- The Commissioner shall appoint an Independent Consultant for inspection of dally performance and supervision of the contract work. The Independent Consultant may be reputed person being a firm, company or a body corporate appointed for supervising and monitoring compliance by the concessionaire with the design requirements, construction requirements and O&M requirements, more particularly to undertake, perform, and carry out the duties, responsibilities, services and activities*
- Such Independent Consultant shall have inspection of the work and give guidance, instruction and convey view points within the frame work of stipulated terms & conditions for better performance or corrective action for the work of Collection, Transfer & Transportation of Municipal Solid Waste, earned on by the Contractor with a view to ensure that the work is carried out smoothly and efficiently as stipulated In the contract and without any Inconvenience to the citizens.*
- The Contractor shall, promptly comply with the deficit in requirement conveyed and instructions*





given by the Independent Consultant/Commissioner from time to time in this regard. Supervisor so provided shall measure the performance daily in prescribe formats for purpose of ascertaining work completion in a desired manner and making payment on this basis.

- If the Commissioner's representative does not remain present for carrying out inspection after the work completion, the work completion and performance measured by the Independent Consultant shall be accepted by the representative of the Commissioner for the purpose of releasing payment for the work.*

1.17 Management of Labour and Prevention of Events of Accidents

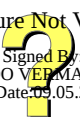
1.17.1 Labour

a) The bidder shall comply with all the provisions of the laws regarding deployment of labour under the contract; The Abolition of contract Labour Act, The Minimum wages Act, The Workmen's Compensation Act and the provisions of the MSW (M&H) Rules 2000.

b) It shall be the liability and responsibility of the contractor to implement the provisions of these acts.

In addition

- The bidder shall not employ In connection with the work any person who has not completed 18 years of age.*
- The bidder shall furnish to the Commissioner; information on the various categories of labour employed by him and the facilities given to the employees in the form prescribed for the purpose at such Intervals as may be specified in the work specification.*
- The bidder shall keep all records desired under the said labour laws and submit periodical returns to the respective statutory authorities.*
- The bidder shall in respect of labour employed by him comply with provisions of the various labour*





Laws and the Rules and Regulations as applicable to them in regards to matters provided therein and shall indemnify MCD in respect of all claims that may be raised against MCD for noncompliance thereof by the contractor.

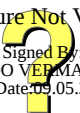
- *The bidder shall obtain, the license in accordance with the rules and provisions of contract Labour (regulation and abolition) Act. 1970 and adhered to all terms and conditions stipulated therein.*
- *The bidder shall pay their worker - supervisor, labourer, drivers etc as per the minimum, wages act in force and amended from time to time.*
- *The bidder or their authorized representative shall on the written directions of the Commissioner or authorized officer of Municipal Corporation of Delhi, immediately take disciplinary action for default or non performance.*
- *In the event of the bidder committing a default or breach of any provision of the above labour laws and MSW (M&H) Rules, 2000 and Regulations as applicable, and pointed out by the statutory authority, the bidder shall without prejudice to any other liabilities under the Act pay to MCD, a sum not exceeding Rs. 5000/- per day for each default till it is redressed.*
- *Notwithstanding anything contained herein, the Commissioner, may take such action as may be necessary for compliance of the various labour laws for this contract and to recover the actual cost incurred by the corporation there of from the bidder if the bidder is the defaulter..."*

45. The relevant paragraphs of the impugned order dated 23rd May, 2017 are reproduced for reference herein below:

"...The matter was adjourned on several dates and finally on 04.05.2017 for disposal of application dated 03.02.2017 of the applicants in the presence of both the parties. There is no



dispute that these workmen are engaged as contract workers by the contractor M/s Delhi MSW Solution Ltd. for the jobs as stated above in the establishment of the non applicant No 2, the Principal Employer. The contractor has already taken a licence under section 13 of the Contract Labour (R&A) Act 1970. The provisions under Rule 25(2)(v) of Contract Labour (R&A) Central Rules 1971 specifically provides that in case where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment 4/5/2017 that the drivers are being paid approximately Rs 11000/- per month. The Union has also stated that Rs 10998/- per month is being paid to the workers. The applicant has stated that directly employed drivers of DMC are being paid in the range of Rs 22000 to 35000 per month and they are doing the same or similar work. The applicant has submitted a photocopy of the wage slip of Sri Vikram Jeet, Cleaner of North MCD for the month of April 2017 for Rs 31503/- and of Sri Surinder Singh, Driver of MCD for the month of March 2017 for Rs 63450/- in support of his claim. The non applicant has submitted a letter signed by some of his workmen stating that they have not authorized the union to raise this dispute as they are fully satisfied with the wages given by the employer i.e. M/s Delhi MSW Solution Ltd. The said letter is of no importance as these workmen are different from those on whose behalf the Union has raised the dispute. Moreover there is every possibility that these workmen might have written under compulsion as nobody is supposed to write anything against his own interest. The contention of non applicant that the said workers are entitled to the wages at the rate minimum wages, fixed by the appropriate Government from time to time is devoid of any merit as per provisions under Rule 25 (v) (a) of the Rules.





The Hon'ble Supreme Court has also established on 26 Oct 2016 in CIVIL APPEAL NO. 213 OF 2013 in State of Punjab & Others vs Jagjit Singh and others that:

'the principle of 'equal pay for equal work' has to be made applicable to those engaged as daily wagers, casual and contractual employees who perform the same duties as regulars. Terming the denial of equal pay for equal work as 'exploitative enslavement', "oppressive, suppressive" and "coercive", the apex court said that in a welfare state, the principle has to be extended to temporary employees as well. Hence In view of the above I am of the considered view that all the contract workers employed by the contractor M/s Delhi MSW Solution Ltd. in the establishment of principal employer, non applicant No 2 are entitled to the same wage rates, holidays, hours of work and other conditions of service as are applicable to the workmen directly employed by the non applicant No 2 for all the categories of HMV/LMV Drivers, Helpers etc as claimed by the applicant union.

Given under my hand and seal this on 18th day of May, 2017 and parties are informed accordingly..."

46. In view of the aforesaid findings of the impugned order, it is observed that the learned Deputy Chief Labour Commissioner (Central) held the petitioner company to be the employer of the workmen represented by the respondent no. 2 Union. Accordingly, it held the petitioner company primarily liable to make payment to the workmen engaged/employed by the petitioner company being their contractor.

47. At this stage, it becomes imperative to refer to Section 21 of the Act, 1970 which imposes obligation upon the contractor to pay the wages of the contractual labour employed by it. The relevant extracts of the same are as follows:

"...21. Responsibility for payment of wages



A contractor shall be responsible for payment of wages to each worker employed by him as contractor labour and such wages shall be paid before the expiry of such period as may be prescribed.

Every principle employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

It shall be duty of the contractor or ensure that disbursement of wages in the presence of the authorized representative of principle employer.

In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principle employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, the contractor labour 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 a debt payable by the contractor...”

48. This Court further notices that the expression “pre-employer” has been defined in Section 2(g) of the said Act which reads as follows:

“...(g). Principal Employer” means

- (i) In relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority as the case may be, may specify in this behalf,*
- (ii) In a factory, the owner or occupier of the factory and where has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948) the person so named,*
- (iii) In a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named,*



(iv) *In any other establishment, any person responsible for the supervision and control of the establishment.*

Explanation: For the purpose of sub-Clause (iii) of this Clause, the expressions “mine”, “owner” and “agent” shall have the meanings respectively assigned to them in Clause J, Clause L and Clause C of sub-Section 1 and Section 2 of the Mines Act, 1952 (35 of 1952)...”

49. Section 13 of the Act, 1970 prescribes provision for grant of license and the same is reproduced herein below:

“...13. Grant of licences. — (1) Every application for the grant of a licence under sub-section (1) of section 12 shall be made in the prescribed form and shall contain the particulars regarding the location of the establishment, the nature of process, operation or work for which contract labour is to be employed and such other particulars as may be prescribed.

(2) The licensing officer may make such investigation in respect of the application received under sub-section (1) and in making any such investigation the licensing officer shall follow such procedure as may be prescribed.

(3) A licence granted under this Chapter shall be valid for the period specified therein and may be renewed from time to time for such period and on payment of such fees and on such conditions as may be prescribed...”

50. Rule 25(2)(v)(a) of the Rules state forms and terms and conditions of license and the same is reproduced herein below:

“..25. Forms and terms and conditions of licence.

2) v) (a) In cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishments, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor



shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work;

Provided that in the case of any disagreement with regard to the type of work the same shall be decided by the Chief Labour Commissioner (Central)..”

51. At this stage, this Court has referred to the judgment passed by the Hon’ble Supreme Court in ***Hindustan Steel Works Construction Ltd. Vs. Commissioner of Labour & Ors.***², wherein, it was *inter alia* observed that if the contractor does not pay the wages to his workmen engaged by him, the terms of Section 21(4) of the Act casts liability upon the principal employer to make good the difference.

52. In the case of ***Randhir Singh vs. Union & Ors.***³, the Hon’ble Supreme Court affirmed the concept of equal pay for equal work and stated that the same is one of the aims of the Constitution of India which must be achieved. The relevant paragraphs of the said judgment are as under:

“..7. Our attention was drawn to Binoy Kumar Mukerjee v. Union of India and Makhan Singh v. Union of India, where reference was made to the observations of this Court in Kishori Mohanlal Bakshi v. Union of India³ describing the principle of “equal pay for equal work” as an abstract doctrine which had nothing to do with Article 14. We shall presently point out how the principle, “equal pay for equal work”, is not an abstract doctrine but one of substance. Kishori Mohanlal Bakshi v. Union of India³ is not itself of any real assistance to us since what was decided there was that there could be different scales of pay for different

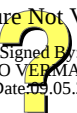
² 1996 SCC (L&S) 1448

³ 1982 1 SCC 618



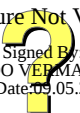
grades of a service. It is well known that there can be and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of “equal pay for equal work” would be an abstract doctrine not attracting Article 14 if sought to be applied to them.

8. It is true that the principle of “equal pay for equal work” is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional goal. Article 39(d) of the Constitution proclaims “equal pay for equal work for both men and women” as a directive principle of State Policy. “Equal pay for equal work for both men and women” means equal pay for equal work for everyone and as between the sexes. directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay. Whether the special procedure prescribed by a statute for trying alleged robber-barons and smuggler kings or for dealing with tax evaders is discriminatory, whether a particular governmental policy in the matter of grant of licences or permits confers unfettered discretion on the Executive,





whether the take-over of the empires of industrial tycoons is arbitrary and unconstitutional and other questions of like nature, leave the millions of people of this country untouched. Questions concerning wages and the like, mundane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to them. The Preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a Sovereign Socialist Democratic Republic. Again the word “socialist” must mean something. Even if it does not mean ‘to each according to his need’, it must at least mean “equal pay for equal work”. “The principle of “equal pay for equal work” is expressly recognized by all socialist systems of law, e.g., Section 59 of the Hungarian Labour Code, para 2 of Section 111 of the Czechoslovak Code, Section 67 of the Bulgarian Code, Section 40 of the Code of the German Democratic Republic, para 2 of Section 33 of the Rumanian Code. Indeed this principle has been incorporated in several western Labour Codes too. Under provisions in Section 31 (g. No. 2d) of Book I of the French Code du Travail, and according to Argentinian law, this principle must be applied to female workers in all collective bargaining agreements. In accordance with Section 3 of the Grundgesetz of the German Federal Republic, and Clause 7, Section 123 of the Mexican Constitution, the principle is given universal significance” (vide International Labour Law by Istvan Szaszy, p. 265). The Preamble to the Constitution of the International Labour Organisation recognises the principle of ‘equal remuneration for work of equal value’ as constituting one of the means of achieving the improvement of conditions “involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled”. Construing Articles 14 and 16 in the light of the Preamble and Article 39 (d), we are of the view that the principle “equal pay for equal work” is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on





no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer.

9. There cannot be the slightest doubt that the drivers in the Delhi Police Force perform the same functions and duties as other drivers in service of the Delhi Administration and the Central Government. If anything, by reason of their investiture with the “powers, functions and privileges of a police officer”, their duties and responsibilities are more arduous. In answer to the allegation in the petition that the driver-constables of the Delhi Police Force perform no less arduous duties than drivers in other departments, it was admitted by the respondents in their counter that the duties of the driver-constables of the Delhi Police Force were onerous. What then is the reason for giving them a lower scale of pay than others? There is none. The only answer of the respondents is that the drivers of the Delhi Police Force and the other drivers belong to different departments and that the principle of “equal pay for equal work” is not a principle which the courts may recognise and act upon. We have shown that the answer is unsound. The clarification is irrational. We, therefore, allow the writ petition and direct the respondents to fix the scale of pay of the petitioner and the driver-constables of the Delhi Police Force at least on a par with that of the drivers of the Railway Protection Force. The scale of pay shall be effective from January 1, 1973, the date from which the recommendations of the Pay Commission were given effect...”

53. In the case of **Jagjit Singh (Supra)**, the Hon’ble Supreme Court enunciated in detail the principle of “equal pay for equal work” stating to the effect that the doctrine behind the same is applicable to all the temporarily engaged employees, i.e., the daily wage employee, *ad hoc* appointees, employees appointed on casual basis, contractual employees and the said employees are duly entitled to the minimum of the regular



pay scale on account of them performing the same duty which are discharged by those engaged on regular basis. The relevant paragraphs of the said judgment are as follows:

“51.1. It is apparent that this Court in State of Punjab v. Surjit Singh [State of Punjab v. Surjit Singh, (2009) 9 SCC 514 : (2009) 2 SCC (L&S) 696] did hold that the determination rendered in para 55 of the judgment in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , was in exercise of the power vested in this Court under Article 142 of the Constitution of India. But the above observation does not lead to the conclusion or the inference, that the principle of “equal pay for equal work” is not applicable to temporary employees. In fact, there is a positive take-away for the temporary employees. The Constitution Bench would, in the above situation, be deemed to have concluded that to do complete justice to the cause of temporary employees, they should be paid the minimum wage of a regular employee discharging the same duties. It needs to be noticed that on the subject of pay parity, the findings recorded by this Court in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , were limited to the conclusions recorded in para 55 thereof (which we have dealt with above, while dealing with the case law on the principle of “equal pay for equal work”).

51.2. Even in the case under reference, State of Punjab v. Surjit Singh [State of Punjab v. Surjit Singh, (2009) 9 SCC 514 : (2009) 2 SCC (L&S) 696] , this Court accepted the principle of “equal pay for equal work”, as applicable to temporary employees by requiring the State to examine the claim of the respondents for pay parity by appointing an expert committee. The expert committee was required to determine whether the respondents satisfied the conditions stipulated in different judgments of this Court including State of Punjab v. Charanjit Singh [State of Haryana v.



Charanjit Singh, (2006) 9 SCC 321 : 2006 SCC (L&S) 1804] , wherein this Court had acceded to the proposition that daily wagers who were rendering the same duties and responsibilities as regular employees, would be entitled to the minimum wage payable to regular employees. And had therefore, remanded the matter back to the High Court for a fresh adjudication. Para 38 of the judgment in State of Punjab v. Surjit Singh [State of Punjab v. Surjit Singh, (2009) 9 SCC 514 : (2009) 2 SCC (L&S) 696] , wherein the remand was directed is being extracted below : (SCC p. 537)

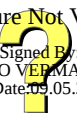
“38. We, therefore, are of the opinion that the interest of justice would be subserved if the State is directed to examine the cases of the respondents herein by appointing an expert committee as to whether the principles of law laid down herein viz. as to whether the respondents satisfy the factors for invocation of the decision in State of Haryana v. Charanjit Singh [State of Haryana v. Charanjit Singh, (2006) 9 SCC 321 : 2006 SCC (L&S) 1804] in its entirety including the question of appointment in terms of the recruitment rules have been followed.”

55. In view of all our above conclusions, the decision rendered by the Full Bench of the High Court in Avtar Singh v. State of Punjab [Avtar Singh v. State of Punjab, 2011 SCC OnLine P&H 15326 : ILR (2013) 1 P&H 566] , dated 11-11-2011, is liable to be set aside, and the same is hereby set aside. The decision rendered by the Division Bench of the High Court in State of Punjab v. Rajinder Singh [State of Punjab v. Rajinder Singh, 2009 SCC OnLine P&H 125] is also liable to be set aside, and the same is also hereby set aside. We affirm the decision rendered in State of Punjab v. Rajinder Kumar [State of Punjab v. Rajinder Kumar, 2010 SCC OnLine P&H 13009], with the modification that the employees concerned would be entitled to the minimum of the pay scale, of the category to which they belong, but would not be entitled to allowances attached to the posts held by them.



57. *There is no room for any doubt that the principle of “equal pay for equal work” has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India under Article 141 of the Constitution of India. The parameters of the principle have been summarised by us in para 42 hereinabove. The principle of “equal pay for equal work” has also been extended to temporary employees (differently described as work-charge, daily wage, casual, ad hoc, contractual, and the like). The legal position, relating to temporary employees has been summarised by us, in para 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us yet again.*

58. *In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.*





59. We would also like to extract herein Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:

“7. The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.”

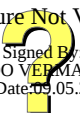
(emphasis supplied)

India is a signatory to the above Covenant having ratified the same on 10-4-1979. There is no escape from the above obligation in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of “equal pay for equal work” constitutes a clear



and unambiguous right and is vested in every employee—whether engaged on regular or temporary basis.

60. Having traversed the legal parameters with reference to the application of the principle of “equal pay for equal work”, in relation to temporary employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the employees concerned (before this Court), were rendering similar duties and responsibilities as were being discharged by regular employees holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of “equal pay for equal work” summarised by us in para 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals were appointed against posts which were also available in the regular cadre/establishment. It was also accepted that during the course of their employment, the temporary employees concerned were being randomly deputed to discharge duties and responsibilities which at some point in time were assigned to regular employees. Likewise, regular employees holding substantive posts were also posted to discharge the same work which was assigned to temporary employees from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity on any of the principles summarised by us in para 42 hereinabove. There can be no doubt, that the principle of





“equal pay for equal work” would be applicable to all the temporary employees concerned, so as to vest in them the right to claim wages on a par with the minimum of the pay scale of regularly engaged government employees holding the same post.

61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding that all the temporary employees concerned, in the present bunch of cases would be entitled to draw wages at the minimum of the pay scale (at the lowest grade, in the regular pay scale), extended to regular employees holding the same post...”

54. This Court is of the view that Section 25(2)(v)(a) of the Rules, 1971 provides that in case where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishments, the wage rates, holidays and hours of the work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work.

55. It is observed by this Court that in the instant case, the petitioner had deployed the workmen in the establishment of the respondent no. 3 in different capacities as drivers, loaders and helpers for the purpose of collecting the municipal solid waste from different locations.

56. After perusal of the documents/materials on the record, it is inferred that it is an admitted that the workmen belonging to the respondent no. 2 Union performs same and similar work as those of the workmen engaged directly by the respondent no. 3, however, they were being paid less



wages than that paid to their counterparts working directly with the respondent no. 3.

57. It is noted that the petitioner, in its reply to the statement of claim had stated that it was complying with the provisions of Minimum Wages Act, 1948. It was also stated in the said reply that the petitioner was the employer and was paying to the employees, their dues and remuneration including PF etc. Upon perusal of the Trial Court's record, it is apparent that the petitioner had not denied that he was not a contractor who engaged the workmen to discharge the work in different capacities as drivers, loaders and helpers etc. Furthermore, paragraph no. 1.16 onwards of the Concession Agreement, it is evident that the petitioner, being the contractor who had engaged the workmen for discharging the works of the MCD i.e. respondent no. 3, comes within the purview of the Act, 1970.

58. In view of the discussions in the foregoing paragraphs as well as the law laid down by the Hon'ble Supreme Court and various provisions of the Concession Agreement, this Court is of the considered view that the petitioner is a contractor who had engaged the workmen represented through the respondent no. 2 Union and the learned Deputy Chief Labour Commissioner (Central) has rightly passed the impugned order, thereby, determining the liability of the petitioner towards the workmen.

CONCLUSION

59. It is held that the reply which had been filed by the petitioner before the learned Deputy Chief Labour Commissioner evidently establishes that the petitioner is a contractor, therefore, before this Writ Court, the petitioner has attempted to make out a different case on a misconceived notion that it is the principal employer and this Court is of



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the view that the said stance of the petitioner is baseless and without any legal backing.

60. This Court is also of the view that the petitioner, at this stage, cannot be permitted to take a view contradictory to the view taken by it before the learned Court below. Therefore, the impugned order passed by the learned Deputy Chief Labour Commissioner on the basis of pleadings before him is in accordance with the law.

61. In view of the aforesaid facts and circumstances as well as the discussions on law, this Court does not find any error or illegality in the impugned order dated 23rd May, 2017 passed by learned Deputy Chief Labour Commissioner (Central) in Claim bearing no. ND-20(01)/2017-PP.DYC and in light of the same, the instant petition is liable to be dismissed.

62. The petitioner is directed to pay the entire dues to the workmen as per the order dated 23rd May, 2023 within three months from the date of this order.

63. Accordingly, the instant petition, being devoid of any merits, stands dismissed along with pending applications, if any.

64. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

MAY 6, 2024
gs/ryp/db