

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 18166 of 2024

Indian Railway Thikadar Mazdoor Congress (Kharagpur Division)
& Ors.
Vs
Union of India & Ors.

For the Petitioners : Mr. Soumya Majumder, Sr. Adv.
Mr. Ajitesh Pandey,
Mr. Zubeen Pandey,
Mr. Monish Ojha,
Mr. Zohaib Rauf.

For the Railways : Mr. Manabendranath Bandyopadhyay.

For the Private Respondent : Mr. Sanjib Kr. Mukhopadhyay.
Ms. Prama Roy,
Ms. Nargish Parveen.

Judgment reserved on : 01.12.2025

Judgment delivered on : 20.01.2026

Shampa Dutt (Paul), J.:

1. The writ petition has been preferred praying for quashing of the decision dated 06.03.2024 and any decision made to the effect of not paying the members of the petitioner Union who have worked for the Indian

Railways during the period 01.01.2001 to 07.07.2009 at the Kharagpur Railway station and to pay wages to the 172 members of the petitioner Union at the rate which their counterparts working for the Indian Railways Catering and Tourism Corporation are paid at the Kharagpur Railway station during the period 01.01.2001 to 07.07.2009 and to fix the rates of minimum wages for Public Motor Transport and pay wages for the period 01.01.2001 to 07.07.2009 along with interest for having worked at the Kharagpur Railway station.

2. The petitioners' case is that, the petitioners (172) have rendered service to the Indian Railways at the Kharagpur Railway station as contractor's workers during the period 01.01.2001 to 07.07.2009. The railway authorities entered into an Agreement with M/s. Dynamic International (hereinafter referred to as the 'Contractor') **w.e.f. 01.04.2001** for sale/supply of the eatables/food products in partnership model where the contractor was to get 75% of the entire sale proceeds and the Railways would get 25% of such proceeds. The said Contractor was to sell the products using his own resources, including manpower, raw materials and other products as required and the Railways was only to provide rent free kiosks/shops and kitchen space to the said contractor. The service rendered was purely for the Railways, and Railways earned revenue from such service of catering to the needs of the Railway passengers.
3. The contractor then engaged 172 erstwhile helpers (being the petitioner Union members) as his labourers to sell the said food/eatables and as such the said 172 helpers became the contract labourers under the said

contractor and the Railway authorities became the principal employer, **w.e.f. 01.04.2001.**

4. The contract labourers continued performing their responsibilities honestly, diligently but they were not paid any wages/commission either by the Railways or the Contractor. Despite several repeated request before the Railways Authorities and the contractor to disburse their due wages, both denied their responsibilities and passed on to each other before different authorities as well.
5. A prayer for the dues was dismissed by the High Court in **WP 2178(W) of 2003** on 07.07.2004.
6. On the direction of the Central Administrative Tribunal Calcutta Bench in OA 609/2003 dated 20.06.2003, the railway authorities passed a reasoned order on 03.11.2003 rejecting the claim of the contract labourers.
7. It is the case of the petitioners that the issue raised for payment of minimum wages to the contract labourers has not fallen for consideration earlier before this Hon'ble Court or before any other adjudicating authority.
8. In compliance of High Court's order dated 11.12.2009, passed in WP No. 16899(W) of 2009, the railway authorities passed an order dated 01.04.2010, without granting any relief.
9. The petitioners approached the office of Labour Commissioner (Central) with the grievances, when the Labour Enforcement Officer (Central), (LEO) Kharagpur submitted his detailed report dated 30.06.2012 holding :-

a. The demand of the union and the contract labourers has a substance.

b. The contractor and the railway administration are both responsible for this abnormal delay in Payment of Wages/Commission to the Vendors/contract labourers.

c. Their claim could be decided under the provisions of the Payment of Wages Act.

d. The claim although barred by limitation, can be admitted, as there is an apparent 'sufficient cause' which entitles the claimant(s) to be granted condonation of delay, in case a claim is filed at the appropriate level, i.e., the Authority under the Payment of Wages Act.

10. The petitioners submitted their claim vide application dated 25.09.2012 before the Authority under the Payment of Wages Act, 1936 for adjudication and realisation of the due wages to its members.
11. After having approached the High Court on numerous occasions, the petitioners approached the Competent Authority under the Minimum Wages Act, 1948 by filing a claim application, which was registered as File No. 47/23/L-Union-E.1.
12. By an Order dated 06.03.2024, the said claim application was disposed of by holding that the same was non-maintainable, on the ground that the work performed by the contractor's employee during the period do not come under **scheduled employment** of the Minimum Wages Act 1948.
13. It is further stated by the petitioners that the nature of activities performed by the employees/workers of the contractor in catering and

vending finished food at the Kharagpur Railway Station is that of unskilled and semi-skilled work, but the minimum rates of wages has been denied on the ground that the activities do not come under the scheduled employment.

14. The petitioners claim that providing food to long distance railway passengers is integral part of railways transport services while the Railways is a Public Motor Transport. The rates have however not notified for purpose of minimum wages by the Central Government. Selling of services by vending and selling food products in railway platform is akin to the activities of shop, and as such the minimum rate of wages for unskilled/ semi-skilled employees in a shop or in Public Motor Transport ought to be granted to the claimants and members of the petitioner Union.
15. Thus, the petitioners have preferred the present writ application being aggrieved with non-payment of wages for the services rendered by the 172 workmen from 2001 to 2009, despite having admittedly worked at the behest of the Indian Railways and the Railways not paying them for their service rendered.
16. In their **affidavit-in-opposition** the respondent/railways have on denying the petitioners' case stated as follows:-
 - i) *The Railway administration has executed an agreement with M/s Dynamic International proprietor K.R. Srinivas (who is the respondent no. 06 in the present writ petition) for the sale and/or supply of the eatable food product items at the Kharagpur Railway Station of South Eastern Railway.*

- ii) *The Railway Administration, Kharagpur Division, South Eastern Railway states that the Commission vendors were engaged by the Railways and such **vendors were free to engage their helpers** according to their own choice. For the purpose of safety, the Railway decided to give **Identity Card** to the helpers chosen and engaged by the Commission Vendors. The Railways also issued necessary circulars for requisite **medical examination** of the helpers and such steps were taken for ensuring the hygienic factor related to the sale of food articles by the helpers engaged by the Commission vendors, who are engaged for the purpose of selling food articles prepared by the Railways. Simply because, the Identity cards were issued by the Railways, no obligation of the Railways ever arose for making payment of commission to the helpers engaged by the Commission vendors. **If the helpers are entitled to get any commission, they are entitled to get such commission only from the vendors who engaged them.** There is absolutely no merit in the submission that since the petitioners worked as helpers engaged by the commission vendors, they should be considered for permanent employment by the Railways.*

17. In reply to the said opposition, it is the petitioners' contention that:-

- a.** That private respondent no. 6 had entered into an **Agreement dated 22nd March, 2001** with the Railway Administration as a Contractor and the said Agreement was subsequently terminated (mid 2009) and a fresh Agreement dated **7th July, 2009** was

executed, wherein the status of private respondent **was changed from 'Contractor' to that of a 'Licensee'**.

- b.** On 31.12.2000, the commission vendors appointed by the Railways were absorbed in Railway service vide Hon'ble Apex Court's order dated 03.12.1997. Since the commission vendors were absorbed by the Railways, the job of sale and supply of food articles were outsourced and the private respondent no. 6 and the railway administration got into a profit sharing agreement 19.02.2001. The private respondent continued the business of sale and supply of the food items by engaging the helpers (172), engaged by the commission vendors, and no new recruitment were made. The helpers stepped into the shoes of the commission vendors and continued to work in the trolley and the stalls under the contractor (respondent no. 6).
- c.** Through the instant writ petition the petitioners are not claiming any permanent or regularization of their employment, in fact the petitioners are praying for the payment of remuneration for the days they had been made to work on behalf of the railway administration by the private respondent no. 6 (from April 2001 to July 2009).

18. The respondent no. 6 in its affidavit-in-opposition have stated that:-

- i.** By the work allotment letter bearing no. COM/G.18/2/M/C/Fast Food/KGP dated February 19, 2001 jointly signed by the respondent no.6 herein and the Senior Divisional Commercial

Manager, South Eastern Railway, the respondent no.6 was permitted to supply/sale of eatable items at Kharagpur Railway Station on 25:75 basis for a period of 21 years, i.e, from January, 2001 to December, 2021.

- ii.** That thereafter a fresh contract agreement for a period of 5 years was signed on July 07, 2009 in between the Railway Authorities and the respondent No. 6. In the said agreement the status of the respondent no. 6 was a "Licensee".
- iii.** That clause 2 of the Memorandum of Agreement dated March 22, 2001 executed by and between the Railway Authorities and respondent no.6 runs as follows:

"that the contractor M/S. Dynamic International shall be allowed to utilise (3) three modernized trolleys for sale of fast food/Chinese items and three trolleys for the sale of South Indian dishes on different platforms at Kharagpur Railway Station Platforms".
- iv.** Clause 7 of the said Memorandum of Agreement dated March 22, 2001 runs as follows :-

"Stipulates that contractor is allowed to utilise three (3) units of staff/vendors duly medically examined by the competent authority for manning the trolleys as well as stalls for sale of approved items".
- v.** That the helpers to the commission vendors were engaged by them and neither by the railway authorities nor by the supply contractor.

- vi.** That the answering respondent was a supply contractor and as per agreement on 75%-25% basis under South Eastern Railway Catering Services who in turn used to sell through the commission vendors but the commission of such commission vendors were disbursed by the railways.
- vii.** That after absorption of all the commission vendors the Senior TC was instructed to act as catering manager and to collect the sale proceed and to deposit 25% to railways and 75% to supply contractor which includes cost of raw materials and cooking charges.
- viii.** That there is no employer-employee relationship between the helpers to the commission vendors and the contractor.

19. In reply the petitioners state that:-

- i.** There were admittedly 86 vendors and **each of the vendors had two helpers.** With the absorption of the 86 vendors in railway service, the services of the 172 helpers (the writ petitioners herein) continued to be utilised as vendor/contract labourers to sell/supply of the eatables/food products as per the agreement under the contractor.
- ii.** For the period from January, 2001 to July, 2009 the Respondent no. 6 was designed as contractor. For the period from August 2009 to January 03, 2023, the Respondent no. 6 is designed as licensee. Each of these designations is actually an interchangeable use or alter ego of other designation by way of an evident camouflage.

- iii. It appears from the records herein that the plight of these vendor/contract labourers who were paid wages ranging between Rs. 4,000/- to Rs. 10,000/- per month since July 2009 in cash in the name of commission stands established in the deposition proceeding before the authority under the Payment of Wages Act, 1936, in case no. "45/1/L-Union/2012 E I" which forms part of the records of this case already, that they were not paid for the period from April 2001 to July, 2009.
- iv. It is stated that each of the vendors like the petitioners had an entitlement of monthly wages ranging between Rs. 4,000/- to Rs. 10,000/- per month (according to their sale figure) for the period from 2001 to 2009 also since the same amount of commission had been paid to the vendors/petitioners from 2009.
- v. It is undisputed that for the period from 2001 to 2009 they have not been paid any wages/remuneration, which has subsequently been branded as commission from the period 2009 onwards.

20. In reply to a query under the RTI Act:-

The SPIO of Railway Authority and in reply to the same the Senior Divisional Commercial Manager - Kharagpur/South Eastern Railway, vide its letter dated 09.03.2011 provided an answer under "Remarks" to **"Item - (j)"** which is reproduced herein below:

"Payment of commission to the vendors is the sole responsibility of the Contractor. For the unpaid commission, the Contractor is liable to pay, but as the

Principal, the Railway cannot take any responsibility until and unless directed by any Court of Law, if there is such provision to do so."

21. Identity Cards were also issued by respondent no. 6 to each of the 172 vendors consistently up to 2022. So the question of adding 58 names illegally as petitioners has no merit.
22. While Respondent No. 6 admits the existence of agreements 19.02.2001, 22.03.2001, and 07.07.2009, it conveniently seeks to disown the obligations arising from engagement of contract labourers during 2001-2009. The workers in question laboured continuously during that period without wages, as confirmed by the Labour Enforcement Officer's report dated 30.06.2012.
23. **Written notes has been filed by the petitioners herein.**
24. The following judgments have been relied upon:-
 - i) ***Jaggo V. Union of India [AIRONLINE 2024 SC 870] Paragraphs-10-17;***
 - ii) ***Shripal & Anr. Vs Nagar Nigam, Ghaziabad [2025 INSC 144] Paragraphs no. 11-17;***
 - iii) ***People's Union for Democratic Rights & Ors. vs Union of India & Ors., (1982) 3 SCC 235, Paras 14-17: Held that non-payment of minimum wages amounts to forced labour under Article 23.***
 - iv) ***Sanjit Roy vs State of Rajasthan, (1983) 1 SCC 525, Paras 3, 4 and 5. Minimum wages must be paid even for relief work; payment below that is violative of Article 23.***

v) ***Hussainbhai v. The Alath Factory Tezhilali Union & Ors. [AIR 1978 SUPREME COURT 1410], Paragraph no. 5.***

25. On hearing the parties and the pleadings on record, the following as evident :-

(i) A Memorandum of agreement dated 22nd March, 2001 was executed between the Divisional Contract Manager, South Eastern Railway, Kharagpur **“Railway Administration”** and M/s Dynamic International Kharida, Kharagpur, Respondent no. 6 the **“Contractor”**.

(ii) **Clause 9 of the agreement is as follows :-**

“Clause 9. That the "Contractor" is allowed to sale the approved items utilizing their staff /vendors and sale proceeds will be deposited with MRR/KGP.”

(iii) The petitioners/workmen herein worked continuously under the contractor (respondent no. 6) and were named as vendors, **from April, 2001 to July, 2009** but were admittedly not paid for the said period.

(iv) The claim for wages of the petitioners was rejected under the payment of wages Act 1936 by the Central Administrative Tribunal on 01.06.2015.

(v) Their claim under the Minimum Wages Act was also rejected by the authority concerned on 06.03.2024 on the ground that the Central Government had not notified minimum rates of wages for these employees as the work done by them, did not fall under the definition of **schedule employment** under Section 2(g) of the Minimum Wages Act, 1948.

26. Section 2(c) of the Contract Labour (Regulation and Abolition) Act, 1970 lays down:-

“Section 2(c) *"contractor", in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor.”*

27. Section 2(b) of the Contract Labour (Regulation and Abolition) Act,

1970 lays down:-

“Section 2(b) *a workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer.”*

28. Section 2(h) of the Contract Labour (Regulation and Abolition) Act,

1970 lays down:-

“Section 2(h) *"wages" shall have the meaning assigned to it in clause (vi) of Section 2 of the Payment of Wages Act, 1936 (4 of 1936).”*

29. The contention of the Railway administration that the petitioners were only the helpers of the commission vendor, has no merit, as vide an order of the Supreme Court in 1997, the said vendors were regularized by the railways and in April 2001, an agreement with the respondent contractor M/s Dynamic International was entered into. The 86 Railway commission vendors (regularized) had two assistants (helpers) each, and they are the 172 petitioners herein, who were then engaged by the ‘contractor’ respondent no. 6 herein.

30. In the agreement through out, the said respondent no. 6 M/s Dynamic has been referred to as **‘contractor’** and it is apparent that M/s Dynamic was the ‘contractor’ under the ‘Railway Administration’.

31. **Clause 7** of the agreement permits the utilization of 3 units of staff/vendors.
32. Copies of identity cards have been filed showing employment during the relevant period of the petitioners herein.
33. The petitioners admit being paid at the rate which ranges from Rs.4000-Rs.10000 from 2009 awards.
34. The number of 172 petitioners have been part of these litigations since the beginning and the said fact is also supported by the report of the Labour Enforcement Officer (Central).
35. Admittedly, the petitioners are running from pillar to post including the Courts, for their wages for the period from April 2001 to July 2009 which on several occasion **has not been considered on technical grounds.**
36. Fact remains that wages for the period 2001 to 2009 has not been paid for work done by the petitioners.
37. The contractor M/s Dynamic denies his responsibility solely on the ground that the petitioners helpers were engaged by the commission vendors who admittedly have been absorbed by the railways and not hired by the respondents herein and as such the petitioners and the respondent no. 6 have no employer-employee relationship.
38. To counter this submission, copies of Identity Cards of some of the petitioners have been filed, which show that the said cards have been issued by the contractor/respondent no. 6 M/s. Dynamic International.
39. Though some of them are post 2009, some of the Identity Cards are for the period in this case between 2001 to 2009.

40. Admittedly, the respondent M/s Dynamic International could not place before the Court as to who were the units of staff/vendors utilized by them as per clause 7 of the agreement.
41. **As such the presence of the petitioners prior to 2001 and post 2009 is on record as workers under the contractor, who since 2009 has been termed as “licensee” in the subsequent agreement and since 2001 as ‘contractor’ (respondent no. 6).**
42. Some of the copies of Identity Cards given to the petitioners relate to the period from 2001-2009 and have been issued by M/s Dynamic as their “contractor”.
43. The reply to the RTI by the Sr. DCM Kharagpur being relevant, is as follows:-
- “Payment of commission to the vendors is the sole responsibility of the Contractor. For the unpaid commission, the Contractor is liable to pay, **but as the Principal, the Railway cannot take any responsibility until and unless directed by any Court of Law, if there is such provision to do so.**”*
44. **In the present case,** it has been duly proved that the respondent no. 6 was a Contractor under the Railway Administration during 2001-2009 and the “Railway” herein is thus the principal employer.
45. The presence of the petitioners for the period 2001 to 2009 has also been proved.
46. Thus the contractors’/workmen who have put in hard work for the period as stated cannot be deprived of their lawful wages, this being their only livelihood.

- 47.** The said workers/vendors by whatever name(s) referred to, were admittedly employed under the “contractor” from 2001 and thus entitled to “wages” under the Act of 1970 for the period from 2001 to 2009 from the contractor. **In default clause 21(4) of the Act of 1970 will be applicable.**
- 48.** Thus, the respondent no. 6 being the contractor during the relevant period (2001-2009) and having received payment/commission during the said period from the respondent/Railway Administration is liable to pay the wages for the said period to the petitioners herein as per Section 2(h) of the Contract Labour (Regulation & Abolition) Act, 1970.
- 49.** The responsibility for payment of wages is provided under Section 21 of the Act of 1970.
- 50. Section 21 of the Contract Labour (Regulation & Abolition) Act, 1970, lays down:-**

“21. Responsibility for payment of wages.-

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

(2) Every principal employer shall nominate a representative duly authorised 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.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.

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

51. **The reply to the RTI by the Sr. DCM, Kharagpur is supported by the said provision Section 21 of the Act.**
52. **Regarding the rate at which the payment is to be made, it appears that it is on record that the petitioners have received payment ranging from Rs.4000-Rs.10000/- per month, on and from July 2009, when a fresh agreement was executed between the “contractor” and the “Railway Administration” wherein it is stated that the “contractor” in the agreement of 2001, has now been termed as a “licensee” on and from July, 2009.**
53. As such, the claim of the petitioners herein for the period from 2001 to 2009 as contractor’s/workers under the respondent no. 6/contractor with the respondent railways who undeniably were in the position of being the principal employer is valid and the same is liable to paid.
54. Thus, considering that payment is being made from 2009 onwards at Rs.4000 to Rs.10,000/- and some of the workers have stated/deposed that they have been paid Rs.4000-Rs.4500 per month from July 2009 onwards, **it is directed that the respondent no. 6/contractor shall pay wages (as per Section 2(H) of the Act of 1970) at the rate of Rs.4000/- per month on and from April, 2001 (date of 1st Agreement) till July, 2009 (new agreement) along with interest at the statutory rate within 30 days from the date of this order, failing which the principal employer/Railway Administration as per Section 21(4) of the Act of 1970 shall pay the outstanding wages**

along with interest as directed within 30 days thereafter and shall be at liberty to recover the same from the contractor as per Section 21(3) of the Contractor Labour (Regulation and Abolition) Act 1970.

- 55. The writ petition being WPA 18166 of 2024 is disposed of as allowed.**
- 56.** Connected application, if any, stands disposed of.
- 57.** Interim order, if any, stands vacated.
- 58.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)