IN THE HIGH COURT OF KARNATAKA

(W.A.Nos.5887, 6105, 6106 and 6607/1997 dated August 14, 1998)

PRESENT

MR. R.P.SETHI, CHIEF JUSTICE

MR. JUSTICE V. GOPALA GOWDA

Between

Chitradurga District Mazdoor Sangh

And

Mysore Kirloskar Ltd. & Others

Minimum Wages Act, 1948-Sections 2(e), 2(i) and 2(g)-'Employment' as used in Schedule must be construed in context of definition of 'employer'-If principle employer included in list of Scheduled employments, no necessity to issue separate notification in respect of employment of security staff procured through contractor:

Appellant-Sangh (labour union) challenged in these appeals an order of a single Judge passed in the writ petition filed by the 4th respondent, (whose workmen were represented by the appellant), holding that the Minimum Wages Act, 1948 was not applicable to the undertaking of the 4th respondent while rendering security services through the said workmen, to the first respondent, the principal employer. The Division Bench allowed the appeals.

HELD: The High Court observed that the Single judge was not justified in holding that there did not exist a relationship of employer and employee between the principal employer (first respondent and the security staff (represented by the appellant Sangh) procured through the fourth respondent (contractor). As the principle employer was included in the list of employments notified under the Schedule (to the Minimum Wages Act, 1948), there was no necessity of issuance of a separate notification with respect to the security staff procured through the fourth respondent.

(Para 11)

Appeals allowed.

For Appellant: Ms.Sheela Krishna
M/s. Krishnaiah and Company.

For Respondent No.1: R.Gururajan
For Respondent No.4: B.L.Sanjeev

Cases referred to	Paras
1982 II-LLJ 454 (SC)	8
1972-II-LLJ-136 (SC)	4

JUDGMENT

Per R.P.SETHI, C.J.

Aggrieved by the orders passed by the authority under the Minimum Wages Act, 1948 (hereinafter referred to as 'the Act'), respondent 4 filed petitions in this Court praying for setting aside the orders produced with the petitions as Annexures-A and B on the ground that as its establishment of providing security personnel to various organisations was not included in the schedule of employment nor any specific notification was issued in that behalf, the

impugned orders were without jurisdiction. The writ petitions were allowed, holding that the workmen of Respondent 4 were not entitled to the grant of minimum wages. However, taking into account the facts and circumstances of the case, the learned single Judge directed the payment of a total sum of Rs.1,00,000/- to be paid as *ex gratia* to the workmen by the Principal employer. The aforesaid amount was directed to be paid within four weeks, which on receipt by the authority under the Act was to be disbursed equally to the beneficiaries.

2. Not satisfied with the order of the learned single Judge, the appellant-Sangh representing the workmen has filed these appeals contending that the learned single Judge was not justified in holding the non-applicability of the Act to the undertaking of Respondent 4 when employed for rendering security services to Respondent 1-the principal employer.

3. It is submitted that Engineering Industry carried on by Respondent 1 has employed the security personnel through the Contractor-Respondent 4 for the purpose of its establishment. The Engineering Industry is stated to have already been notified under the Act. The Respondent 1 being the principal employer, cast a duty upon its contractor to pay the minimum wages with respect to the schedule employment. It is further submitted that the terms of contract entered into between the engineering industry of Respondent 1 and Detective Agency of Respondent 4 also had stipulated for payment of minimum wages.

4. The Act was enacted to provide for fixing minimum rates of wages in certain employments. The object of the Act was noted by the Supreme Court in *Y.A. Mamarde and Others v. Authority under the Minimum Wages Act (Small Causes Court), Nagpur and Another,* (1972-II-LLJ-136), wherein it was held that it was enacted to provide for fixing minimum rates of wages with the object to minimise the exploitation of the ignorant, less organised and less privileged members of the society by the capitalist class.

5. Section 3 authorises the appropriate Government to fix the minimum rates of wages payable to employees specified in Part-I or Part-II of the Schedule and in an employment added to either part by notification under Section 27.

6. In order to determine the liability of payment of the minimum wages under the Act, it is necessary to properly understand the definition of the employer, employee and the scheduled employment.

'Employer' has been defined under Section 2(e) of the Act as:

'employer' means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except in sub-section (3) of Section 26:

(i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under clause (f) of sub- section (1) of Section 7 of the Factories Act, 1948, as manager of the factory;

(ii) in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;

(iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the person appointed by such authority for the supervision and control of employees or where no person is so appointed the chief executive officer of the local authority;

(iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed

under this Act, any person responsible to the owner for the supervision and control of the employees or for the payment of wages."

'Employee' has been defined under Section 2(i) of the Act as:

'employee' means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union".

'Scheduled employment' is defined under section 2(g) of the Act as:

'scheduled employment' means an employment specified in the Schedule, or any process or branch of work forming part of such employment.

7. A perusal of the definitions referred to herein above would clearly show that the principal employer shall be deemed to be an employer notwithstanding the availing of service indirectly through another person and liable to pay the minimum wages under the Act, if the employment carried on by it is notified and shown as such in the scheduled employment to the Act. It is conceded before us that principal employer respondent 1 herein was engaged in the employment, which was a scheduled employment under the Act as notified vide Government of Karnataka Notification No.SWL 13 LMW 85-11, dated February 18, 1987.

8. The Supreme Court in *People's Union for Democratic Rights and Others v. Union of India and Others,* (1982-II-LLJ-454), held that where a person provides labour or service to another for remuneration, which is less than the minimum wage, the labour or service provided by him fell within the scope and ambit of the words 'forced labour' under Article 23. A person not paid the minimum wages was held entitled to come to the Court for enforcement of his fundamental right under Article 23 by asking the Court to direct payment of minimum wages to him so that the labour or service provided by him ceases to be forced labour and the breach of Article 23 was remedied. It further held:

> "It is therefore clear that when the petitioners alleged that minimum wage was not paid to the workmen employed by the contractors, the complaint was really in effect and substance a complaint against violation of the fundamental right of the workmen under Article 23".

9. The word employment as used in the Schedule to the Act must be construed in the context of the word 'employer' as contained in Section 2(e) of the Act and even if a worker prepares goods at his own residence and supplies to the employer, he for the purposes of the Act is required to be treated as an employee and the person engaging him in scheduled employment for reward or wages is under an obligation to comply with the provision of the Act and the rules made thereunder. Giving definition any other meaning would defeat the purpose and object of the Act. Such an approach would not only deprive the workers the payment of minimum wages, but would also be against the public policy inasmuch as in all such cases the principal employer instead of directly employing the persons for its business and allied matters may procure the services through agencies and organisations who have not specifically been included in the Schedule of the Act.

10. While dealing with the Industrial Laws a rational approach is needed keeping in mind the controversy and the objects intended to be achieved by the enactments sought to be relied upon by the workman. In this regard, the

authority under the Act dealt with the evidence led before it and rightly concluded that the respondent-Establishment came within the purview of the Act and liable to pay the minimum wages. After framing a specific issue as to whether the workmen were employed in the scheduled employment or not, the authority under the Act rightly concluded:

"The applicant in his application and evidence has stated that the workmen deputed by I respondent under the provisions of Contract Labour (Regulation and Abolition) Act, 1970 were working with the II respondent and in this regard a certificate was issued to I respondent under Contract Labour Act, Rule 25(1), Form V and on the basis of said Certificate the I respondent has secured licence under Contract Labour (Regulation and Abolition) Act, 1970, Rule 25(1) of IV (Exhibit 20). The respondents have objected the same.

The Counsel appearing for the II respondent has stated that the workers of I respondent are not the permanent workers of the II respondent and Muster Roll, wage registers are not maintained by them and the designation/term security guard does not appear in the notification of Government of Karnataka and therefore the workers of I respondent are not the workers of the II respondent. The Counsel appearing for the beneficiaries has stated that it was admitted by the I respondent in their objections and evidence that I respondent had recruited Guards who were deputed to the establishment of II respondent, he has also cited the statement of I respondent as follows:

"I am working as security contractor, it is true that security guards provided by us during 1990-91 to M/s.Kirloskar, Harihara, there was an agreement between us and M/s.Mysore Kirloskar Limited, Harihara, I have obtained the License under the Contract Labour (Regulation and Abolition) Act, at the time of providing guards to M/s.Kirloskar, Harihara. We ourselves have appointed the security guards who were deputed to Harihara".

Thus the I respondent has accepted that the above beneficiaries were employed by the respondent I.

The Counsel appearing for the beneficiaries has cited the verdict of Kerala High Court in the case *Kerala State Coir Corporation Limited v. Industrial Tribunal, O.P.No.6767 of 1990,* dated November 29, 1994 which has held that workers deputed by M/s. State Security Guards to work in Kerala State Coir Corporation may raise an industrial dispute as they become the workmen of the principal employer under Section 2(s) of the Industrial Disputes Act, 1947.

On the basis of the above documents and the arguments of the Counsel I have come to conclusion that the applicant has proved that the above workmen were the workers of the respondents and I answer in affirmative for the Issue No.4".

11. The learned Single Judge was therefore not justified in holding that there did not exist a relationship of employer and employee between the principal employer and the security staff procured through respondent 4. As the principal employer was included in the list of employments notified under the Schedule, there was no necessity of issuance of a separate notification with respect to the employment of the security staff procured through respondent 4. It appears that the learned Single Judge himself had doubts about the relationship of the workmen and the principal employer and for that he directed the payment of Rs.1,00,000/- terming it as *ex gratia* payment. If the principal employer was not liable to pay any amount, there was no necessity of issuance of any direction against it. The approach of the learned single Judge appears to be hyper-technical, which obviously ignored the purpose, object and the scheme of the Act enacted as a social welfare legislation for the benefit of the workmen employed in various establishments by guaranteeing them minimum wages. The authority under the Act is shown to have adopted a correct approach and rightly issued the directions after appreciation of the facts of the case and the provisions of the law applicable.

12. Under the circumstances, the appeals are allowed by setting aside the order of the learned Single Judge and upholding the order of the authority under the Act. Writ petitions shall stand dismissed and rule issued discharged. Order of the authority under the Act shall be given effect to. No costs.

£££

IN THE HIGH COURT OF GUJARAT
(S.C.A.No.8478/1998 dated January 18, 1999)

PRESENT

MR. JUSTICE R.BALIA

Between

Milan Cinema & Another

And

Maganlal Nathalal Mistry

Industrial Disputes Act, 1947-Section 33-C(2)-Whether Labour Court can adjudicate disputed claim of workman for monetary benefit when there is dispute regarding relations of "master and servant"-Held that Labour Court has no jurisdiction to entertain application under Section.

The appellant challenged the order of the Labour Court on a claim of the respondent under Section 33-C(2) of the I.D.Act claiming himself to be the workman of the appellant raising a demand for computing dearness allowance, over time allowance and bonus payment to him from April 30, 1983 till the application was filed. The High Court allowed the petition quashing the order of the Labour Court under Section 33-C(2).

HELD : The High Court observed that the very nature of Section 33-C(2) suggests that question as for entitlement of the workman to receive any money or benefit must pre-exist before inviting adjudication on the amount payable to workman. It is only in the nature of execution proceedings where right to receive money or benefit is already determined or admitted and the question is only to the quantum of money or benefit which is to reach the recipient. The question as to entitlement is beyond the scope of enquiry under Section 33-C(2). The Labour Court has therefore no jurisdiction to entertain application under Section 33-C(2) and embark upon an enquiry once issue clearly before it was about entitlement of the claimant to any right.

(Paras 3&4)

The remedy for the respondent-workman is in raising of an industrial dispute regarding entitlement if any and to seek adjudication thereon.

(Para 3)

Petition allowed.

For Petitioners: K.V.Gadhia
For Respondent: D.S.Vasavada