(2011) 08 MAD CK 0219

Madras High Court

Case No: Writ Petition No''s. 14860 to 14863 of 2009

Jay Shree Tea and Industries Ltd.	APPELLANT
Vs	
The Deputy Commissioner of Labour and The Inspector of Plantations	RESPONDENT

Date of Decision: Aug. 19, 2011

Acts Referred:

- Constitution of India, 1950 - Article 23
- Minimum Wages Act, 1948 - Section 15, 19, 2, 20, 20(1)

Hon'ble Judges: K.Chandru, J

Bench: Single Bench

Advocate: S. Ravindran, for T.S. Gopalan and Co, for the Appellant; V. Subbiah Special Government Pleader, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

K.Chandru, J.

These four writ petitions are filed by the management of Jay Shree Tea and Industries Limited, represented by its Commercial Manager. They have come forward to challenge the orders passed by the first Respondent/ Deputy Commissioner of Labour, viz., the authority under the Minimum Wages Act in M.W. Nos. 158 of 2004, 70 of 2005, 71 of 2005, and 159 of 2004 respectively, dated 6.2.2009.

2. By the impugned orders, the first Respondent computed the amounts in favour of workmen granting difference in minimum wage payable to them. In the order impugned in W.P. No. 14860 of 2009, the names of 30 workmen were mentioned. In the second writ petition (W.P. No. 14861 of 2009), the names of 201 workmen were mentioned. In the third writ petition (W.P. No. 14862 of 2009), the names of 133 workmen were mentioned, and in the fourth writ petition (W.P. No. 14863 of 2009),

the names of 24 workmen have been mentioned.

3. These writ petitions were admitted on 30.7.2009. Pending the writ petitions, this Court granted interim stay after recording the fact that the amount as per the impugned orders has already been deposited with the first Respondent.

4. It is seen from the records that the second Respondent/Inspector of Plantations, after inspecting the Petitioner''s estate, found that the Petitioner was not complying with the minimum wages notification made by the State Government vide G.O.(2D) No. 58, Labour and Employment Department, dated 30.8.1995 and, therefore, he appealed to the first Respondent, being the authority constituted u/s 20 of the Minimum Wages Act, 1948 (for brevity, "the Act''), to compute the amount.

5. The first Respondent took up the said complaint and assigned various numbers, as noted already, and issued notice to the Petitioner/ management. The Petitioner/management contended that it was wrong on the part of the second Respondent to allege that they were not paying minimum wages.

6. It was stated that the yields were divided into three different seasons, viz., high crop, average crop, and low crop. It is during the high crop season, apart from the permanent workers, casual and temporary workers will also be engaged. The workers are paid on the basis of the settlement reached between them and as per the settlement, for plucking of 30 Kgs. of green tea leaves, the casual workers will be paid Rs. 60/-. It was stated that since the minimum wage fixed for the casual workers worked out to Rs. 56.44, whereas the management had been paying Rs. 60/-, and since it is higher than the minimum wage, there is No. question of paying any excess amount.

7. It was also stated that the workers, if they did not pluck 30 Kgs. of green tea leaves, they will be paid only proportionate to the tea leaves plucked by them and the question of non payment of minimum wages does not arise. It is not enough if the workers are in the employment for a period of 8 hours, but they should also keep up the workload fixed for them. If anyone does not fulfill the minimum requirement, they cannot claim the minimum wages, as they are disqualified in terms of Section 15 of the Act.

8. However, the authority, after recording the evidence of the persons on the side of the second Respondent and also the statements of the persons on the Petitioner''s side and after perusing the documents marked, rejected the case of the Petitioner and held that the workmen were entitled to the difference in the minimum rate of wages and computed the difference in respect of each of the workmen. The authority held that linking the production norms with the minimum wage was not permissible, as the notification issued under the Act does not indicate any such linking with the production. Even the argument that there was No. employer-employee relationship between the Petitioner/Management and the workmen was also negatived, because, precisely, it was those workmen who were

plucking tea leaves and handing over to the management and therefore, the management, being the beneficiary of their employment, cannot disown their employment status.

9. In the present case, the Petitioner/Management, for reasons best known to them, did not make the 30 workmen in W.P. No. 14860 of 2009, 201 workmen in W.P. No. 14861 of 2009, 133 workmen in W.P. No. 14862 of 2009, and 24 workmen in W.P. No. 14863 of 2009, who are beneficiaries under the impugned orders, as party to the writ petitions either in individual capacity or in representative capacity and these writ petitions are liable to be dismissed on the short ground of non joinder of parties.

10. When a minimum wages notification was challenged by the employers before this Court and when this Court found the workmen, who are beneficiaries, were not made parties, all such writ petitions were dismissed holding that in the absence of the beneficiaries, effective adjudication cannot be done on the vires of the said notification. Similarly, in the present case, as the workmen working in the Petitioner/estate are necessary and proper parties, in their absence, these writ petitions cannot be

adjudicated. A Division Bench of this Court in T.R. Sukumaran v. State of Tamil Nadu, (1978) 53 FJR 301, at page 305, has observed as follows:

We may also point out that the writ petitions are liable to be dismissed on a very narrow ground as well. The Petitioners have not impleaded the respective employees or the representatives of the employees as parties to the writ petitions. In the event of the Petitioners succeeding in the writ petitions, the persons who will be really affected will be the employees and they have not been impleaded as parties and in their absence, No. relief can be given to the Petitioners herein we are referring to this as an additional ground for dismissing the writ petitions.

11. The said judgment came to be followed subsequently in Muruga Home Industries v. Government of Tamil Nadu and Anr. 1996 I LLJ 598 and in paragraph (29), it was observed as follows:

29. With regard to preliminary objections taken by the Respondents that the Petitioners have not impleaded the necessary parties and therefore, the writ petitions are liable to be dismissed in limine, there is force in the said contention in view of the Supreme Court ruling in Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, , referred to above, and the judgment of the Division Bench of this High Court in T.R. Sukumaran v. State of Tamil Nadu (supra). The ruling cited by learned Counsel for the Petitioner in State of H.P. v. Kailash Chand Mahajan, 1992 Lab IC 1371 is not applicable to the facts and circumstances of the case. On this ground also, the writ petitions are liable to be dismissed.

12. However, Mr. S.Ravindran of M/S.T.S.Gopalan and Company, learned Counsel for the Petitioner contended that in the absence of any complaint by the workmen concerned, the Inspector of Plantations cannot take up the issue and file complaints and get the issue adjudicated. He also submitted that when the workmen were paid on the basis of the contract of employment and the contract stipulated plucking of 30 Kgs. of green tea leaves per day, if the workmen do not meet the workload fixed, they are not eligible to get the difference in minimum wage. He also submitted that the engagement of the workmen was done on the basis that they will get Rs. 2/- for every kilogram of green tea leaves plucked by them and it was not the case that the workmen were getting less than the minimum wage and only in such cases the question of invoking the Act will apply.

13. However, this contention overlooks the fact that the employment in plantation was specifically included as Item No. (4) in Part I of the schedule of employment u/s 2(g) read with Section 27 of the Act. Further, u/s 19 of the Act, Inspectors are appointed for overseeing the implementation of the Act. u/s 20(2) of the Act, a claim for difference in minimum wages can be made either by the legal practitioner, or an office bearer of a trade union, or any Inspector, or any other person acting with the permission of the authority u/s 20 of the Act and therefore, in the absence of the workmen concerned approaching the authority, the complaint made by the Inspector of Plantations, who is also a notified Inspector under the Act in terms of G.O.Ms. No. 68, Labour and Employment Department, dated 24.4.2000, is in accordance with the provisions of the Act. Hence, the objection raised by the management in this regard must necessarily fail.

14. The next contention was that if the conditions required for claiming the minimum wages are not fulfilled, the workmen have No. right to claim minimum wages. For this purpose, reliance was placed upon the judgment of the Supreme Court in The Pabbojan Tea Co. Ltd., etc. Vs. The Deputy Commissioner, Lakhimpur, etc., . The Petitioner cannot cite the judgment torn out of the context in which the said judgment was rendered. In that case, the Supreme Court has observed as follows:

17... The notification dated March 11, 1952 was clearly applicable only to #ordinary unskilled labour#. The word #ordinary'' has in our opinion, some significance. It means #usual, not exceptional#. In other words, ordinary unskilled labour must mean unskilled labour prepared to work and working in the ordinary way. If under Rule 24 of the rules framed under this Act the period of work is fixed at nine hours a day, a labourer who cannot work for more than half of it, does not fall within the category of ordinary unskilled labour....

The object of the Act is to ensure some sort of industrial peace and harmony by providing that labour cannot be exploited and must at least be provided with wages which are fixed at certain minimum rates. It would go against such a principle if the courts were to uphold that persons who cannot work for more than half a day

should receive what others working a full day get.

It was only in the context of the workmen not willing to work for the full hours for which the minimum wages were fixed, the Supreme Court made the observation that one has to perform the task for making a valid claim under the Act.

15. Thereafter, the learned Counsel for the Petitioner submitted that since there is No. dispute with reference to the rate by which the workmen were paid wages, viz., Rs. 2/- per Kg. for plucking green tea leaves, the authority u/s 20(1) of the Act is not competent to compute the amount and for this purpose, he relied upon the judgment of the Supreme Court in under:

7... If there be No. dispute as to rates between the employer and the employees, Section 20(1) would not be attracted. The purpose of Section 20(1) seems to be to ensure that the rates prescribed under the Minimum Wages Act are complied with by the employer in making payments and, if any attempt is made to make payments at lower rates, the workmen are given the right to invoke the aid of the Authority appointed u/s 20(1). In cases where there is No. dispute as to rates of wages, and the only question is whether a particular payment at the agreed rate in respect of minimum wages, overtime or work on off-days is due to a workman or not, the appropriate remedy is provided in the Payment of Wages Act.

But this argument was rightly rejected by the authority by stating that the minimum wages notification relied upon by the workmen did not prescribe a minimum workload for getting the minimum wage and it is also not the case of the Petitioner/management that the workmen were not in employment for the entire part of the day, for which the minimum wage notification prescribed the rate of wages.

16. He also relied upon the judgment of the Supreme Court in mum wage would amount to forced labour prohibited by Article 23 of the Constitution of India, apart from holding that the exemption granted to the Minimum Wages Act by the State of Rajasthan is illegal. In paragraph (5), it was observed as follows:

5. We must then proceed to consider whether on the facts the labour provided by the workers employed in the construction work of Madanganj-Harmara Road could be said to be #forced labour# on the ground that they received wage less than Rs. 7 per day. Now it was not disputed on behalf of the Respondent that the wage paid to a gang of workmen depended upon the work turned out by a particular gang and if it was less than the norm fixed by the Public Works Department, the wage earned by each member of the gang would fall short of the minimum wage of Rs. 7 per day. But the argument was that this did not involve any breach of Article 23 because if any particular gang turned out work according to the norm fixed by the Public Works Department, the amount paid to the Mate of the gang was enough to give to each workman, on distribution, the minimum wage of Rs. 7 per day, and it was only if less work was turned out by the gang that the workmen would receive less than

the minimum wage of Rs. 7 per day and this result would ensue not on account of any default on the part of the Respondent but entirely because of the lethargy of the workmen constituting the gang. The workmen, said the Respondent, could always earn the minimum wage of Rs. 7 per day by turning out work according to the norm fixed by the Public Works Department but if they did not do so and in consequence received less than the minimum wage of Rs. 7 per day the Respondent could not be held responsible for breach of the fundamental right conferred under Article 23. This argument does, at first blush, appear to be attractive, but a closer scrutiny will reveal that it is unfounded. If we look at the Notification issued under the Minimum Wages Act, 1948 fixing the minimum wage of Rs. 7 per day for workmen employed in the construction work, it will be obvious that the minimum wage is fixed per day and not with reference to any particular quantity of work turned out by the workman during the day. Nor does the Notification empower the employer to fix any particular norm of work to be carried out by the workman with reference to which the minimum wage shall be paid by the employer. The minimum wage is not fixed on piece-rate basis, so that a particular minimum wage would be payable only if a certain amount of work is turned out by the workman and if he turns out less work, then the minimum wage payable would be proportionately reduced. Here the minimum wage is fixed at Rs. 7 per day and that is the minimum wage which must be paid by the employer to the workman so long as the workman works throughout the working hours of the day for which he can lawfully be required to work. The employer may fix any norm he thinks fit specifying the quantity of work which must be turned out by the workman during the day, but if the workman does not turn out work in conformity with such norm, the employer cannot pay him anything less than the minimum wage. If the norm fixed by the employer is reasonable and the workman does not turn out work according to such norm, disciplinary action may be taken against the workman and in a given case, he may ever be liable to be thrown out of employment, but he cannot be paid less than the minimum wage, unless, of course, the minimum wage fixed by the Notification under the Minimum Wages Act, 1948 is co-related with the quantity of work to be turned out by the workman. Otherwise, it would be the easiest thing for the employer to fix an unreasonably high norm which a workman working diligently and efficiently during the day cannot possibly reach and thereby deprive the workman of the minimum wage payable to him. There can therefore be No. doubt that in the present case the Respondent was not entitled to pay less than the minimum wage to the workmen belonging to a gang on the ground that such gang turned out work less than the norm fixed by the Public Works Department.

The above quoted passage from the decision of the Supreme Court is clearly on the point.

17 Mr. S.Ravindran, learned Counsel for the Petitioner/management stated that when the Petitioner was prosecuted, though they were convicted by the Judicial Magistrate, Valparai in S.T.C. No. 471 of 2004, on appeal in Criminal Appeal No. 517

of 2005, the learned Additional District and Sessions Judge, Coimbatore, by judgment dated 20.4.2006, acquitted the officers of the estate and he gave a finding that there was No. jural relationship between the management and the workers and reliance was placed upon the judgment of the Supreme Court in Nilgiris Cooperative Marketing Society Limited v. State of Tamilnadu, 2004 II LLJ 253.

18. The findings rendered by the Criminal Appellate Court may not have any bearing on the minimum wages computed by the authority constituted under the Act and the paper arrangement made, namely licensing arrangement, is a concept to get over the provisions of the various labour legislations and the first Respondent refused to accept that they were independent contractors and also did not follow the order passed by the Criminal Court. A complaint was also made by a trade union by name Anamalai Ambedkar Plantation Workers'' Union and it was also marked before the authority. He believed the evidence of the Inspector of Plantations, namely the second Respondent, and the finding rendered by the Criminal Court was based upon the concept that one should be found guilty only beyond reasonable doubt, whereas the finding in the civil law is based on preponderance of probabilities. If this contention of the Petitioner/management is allowed, then it is very easy to defeat the purpose of fixing the minimum wages. Under such circumstances, this Court is not inclined to interfere with the findings rendered by the first Respondent.

19. The learned Counsel for the Petitioner placed reliance upon a judgment of the Supreme Court in Parry and Co. Ltd. Vs. P.C. Pal and Others, for contending that the employer can bona fide reorganize his business and that cannot be gone into by the authority so long as the decision was not actuated by victimization or unfair labour practice. He also referred to the judgment of the Supreme Court in Ghatge and Patil Concern''s Employees'' Union Vs. Ghatge and Patil (Transports) Private Ltd. and Another, for contending that there is No. prohibition for converting the existing worker into independent contractor. In the present case, the workers have not been made parties to go into the contention raised by the Petitioner/management. In fact, the writ petitions are liable to be rejected on the short ground of non joinder of parties. Even otherwise, the authority has given a proper finding to reject the case of the management, and since the management has failed to prove before the authorities about the lack of jural relationship, the finding rendered by the authority cannot be found fault with.

Therefore, not only on the ground of non joinder of parties but even on the merits the Petitioner has not made out any case. Hence, these writ petitions stand dismissed. The first Respondent is hereby to direct the second Respondent to disburse the amount lying in deposit in his office. No. costs. Consequently, M.P. No. 1 of 2009 in W.P. No. 14860 of 2009, M.P. No. 1 of 2009 in W.P. No. 14861 of 2009, M.P. No. 1 of 2009 in W.P. No. 14862 of 2009, and M.P. No. 1 of 2009 in W.P. No. 14863 of 2009 are closed.