

(2010) 10 MAD CK 0262

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 6 of 2005

The Management, Dindigul
Ladies Polythene Workers
Industrial Co-operative Society
Limited

APPELLANT

Vs

The Controlling Authority under
the Minimum Wages Act (Deputy
Commissioner of Labour) and
The Assistant Inspector of
Factories

RESPONDENT

Date of Decision: Oct. 29, 2010

Citation: (2011) 128 FLR 269 : (2011) 2 LLJ 317 : (2011) LLR 283

Hon'ble Judges: S. Nagamuthu, J; R. Banumathi, J

Bench: Division Bench

Advocate: V.O.S. Kalaiselvam, for the Appellant; K. Balasubramanian, A.G.P., for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R. Banumathi, J.

Short point falling for consideration is whether Minimum Wages Act is applicable to the Members of Co-operative Society who are engaged in the manufacture work.

2. Petitioner-Society has been registered under Factories Act and it has engaged in the production of Polythene bags. Petitioner-Society admitted 32 members/workers who were doing the work of folding, cutting etc. 2nd Respondent-Assistant Inspector of Factories, Dindigul inspected the Petitioner- Society. In the Claim Petition No. 55/2001 filed before the Authority under Minimum Wages Act, 2nd Respondent has stated that 32 workers are employed in the Polythene bag production work performing "jobbers" work, the employees are covered under

Employees" State Insurance Act and Employees" Provident Fund Act and hence, Petitioner-Society falls under the coverage of Minimum Wages Act. The said 32 workers were not paid Minimum Wages as notified by the Government in G.O.(2D) No. 59 dated 19.12.1997 under the Minimum Wages Act for the period from January 2000 to August 2000.

3. Petitioner-Society resisted the Claim Petition stating that the members of the Society cannot be the employees and the said 32 persons are not the employees, but only members of the Society and those persons remain in the factory only one or two hours and that they are at liberty to leave the premises immediately after the completion of the quantum of work assigned to them. According to Petitioner-Society, their status cannot be equated as "Jobbers" which is grouped under the skilled categories in G.O.(2D) No. 59 dated 19.12.1997.

4. On the Claim Petition filed by the 2nd Respondent, 1st Respondent-Controlling Authority under Minimum Wages Act held that 32 persons involved in this case were doing the work of folding, cutting etc. Based upon the evidence of 2nd Respondent, the Controlling Authority held that the nature of the job done by 32 persons involved in the dispute is that of "Jobbers" and hence, 32 workers are entitled to get Minimum Wages fixed for "Jobbers" in G.O.(2D) No. 59 dated 19.12.1997.

5. Challenging the order of 1st Respondent, the Management preferred Writ Petition contending that 1st Respondent has failed to note that the said 32 persons are shareholders/members elect Directors, Vice-President, President and administer the affairs of the Society and that they enjoy the dividends and share profits and therefore, they are not the workmen as per the provisions of the Tamil Nadu Co-operative Societies Act and the Rules made thereunder and prayed for issuance of Writ of Certiorari to quash the orders of 1st Respondent made in M.W. No. 55 of 2001 dated 23.09.2004.

6. When the Writ Petition came up for hearing, before the learned single Judge, the learned single Judge referred to the decision reported in 2003 (3) LLN 674 [Madathupatti Weavers Co-operative Production and Sales Society Limited v. Regional Provident Fund Commissioner, Madurai and two Ors.] wherein the Division Bench of this Court considered the applicability of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 to the members of Co-operative Society. Holding that members of Co-operative Society cannot be construed as workmen, in Madathupatti Weavers" case, the Division Bench of this Court held as under:

18. ...The society employed eight persons as their staff to maintain their records and other connected work. All the members of the Society are shareholders and they formed the Board of Management. They elect the President and Vice President among themselves. They share the profits, if any, among themselves. Besides, it is stated that all shareholders, who are members do not get yarn regularly and weave the cloth, nor is there any time frame work. The society also does not exercise any

supervising control over them.

7. The learned single Judge also referred to [The Workmen of Salem Co-operative Motor Society for Ex-Servicemen Ltd. Vs. The Government of Tamil Nadu and Another](#), wherein another Division Bench has held "notwithstanding the fact that a person is a member of a society, when employed in the society, the relationship of master and servant will come into existence and held that member of a society can well be its employee". Pointing out that there is two conflict views in the two decisions 2003 (3) LLN 674 and [The Workmen of Salem Co-operative Motor Society for Ex-Servicemen Ltd. Vs. The Government of Tamil Nadu and Another](#), the learned single Judge referred the matter to be placed before the appropriate Bench and accordingly, the matter was listed before us on the orders of the Hon"ble Chief Justice.

8. As pointed out earlier, in Madathupatti Weavers" case, the Division Bench of this Court held that members of the society elect President, Vice- President among themselves and that they share the profits and that the Society also does not exercise any control over them and therefore, those members cannot be construed as employees of Co-operative Society. As against the said judgment, the Regional Provident Fund Commissioner has preferred appeal before the Supreme Court. In the decision reported in 2008 (3) LLN 507 [Regional Provident Fund Commissioner and Ors. v. Madathupatti Weavers Co-operative Production and Sales Society Limited], the Supreme Court has dismissed the Appeal preferred against the judgment in Madathupatti Weavers Co-operative Production and Sales Society Limited. Therefore, the ratio of the decision in 2003 (3) LLN 674 holds the field. We would have remitted the matter back to the learned single Judge. Since the Writ Petition is of the year 2005, with the consent of both the Counsels, we have taken up the Writ Petition and heard the arguments of both the counsels.

9. As rightly contended by the learned Counsel for the Petitioner-Society, in the instant case 32 persons are members who elect the Directors, Vice- President and President and they manage and administer the affairs of the Society and they enjoy the dividends and share the profits and also take policy decisions with regard to the affairs of the Society, applying the ratio of the decision in 2003 (3) LLN 674, they are not workmen as per the provisions of Tamilnadu Co-operative Societies Act. Even though, Petitioner-Society has been registered under the Factories Act and 32 persons are covered under the Employees" State Insurance Act, since 32 persons are administering the affairs of the Society, they cannot be categorised as "Jobbers" for fixation of minimum wages and applicability of Minimum Wages Act.

10. In the result, the order of the 1st Respondent in M.W. No. 55 of 2001 dated 23.09.2004 is quashed and the Writ Petition is allowed. No costs.