

(1986) 08 BOM CK 0052

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No. 1797 of 1982

Arvi Tahsil Co-operative
Agricultural Purchase and Sale
Society Ltd.

APPELLANT

Vs

Dnyaneshwar Krishnaji Dhale

RESPONDENT

Date of Decision: Aug. 8, 1986

Acts Referred:

- Minimum Wages Act, 1948 - Section 1(4)

Citation: (1987) 1 BomCR 28

Hon'ble Judges: H.W. Dhade, J

Bench: Single Bench

Advocate: M.P.M. Pillai, for the Appellant; S.D. Thakur, for the Respondent

Final Decision: Dismissed

Judgement

H.W. Dhabe, J.

This is a writ petition arising out of the proceedings u/s 33-C(2) of the industrial Disputes Act, 1947 (for short the Act).

The respondent filed a claim petition in which he claimed the difference between his existing wages and the minimum wages fixed under the minimum wages notification for the shops and commercial establishments. The learned Labour Court allowed the claim made by him. Being aggrieved the petitioner society has preferred the instant writ petition in this Court.

2. The first contention, which is raised in this writ petition by the learned Counsel for the petitioner is that the Minimum Wages Act is a self contained Code and hence application u/s 33-C(2) of the Act was not tenable. The said contention however, stands concluded by the Division Bench judgment of this Court in the case of Municipal Council Achalpur v. Shaikh Rahim Shaikh Rustam and others, 1984 Mh.L.J. 998. The above contention therefore deserves to be rejected. The second contention

urged on behalf of the petitioner is that this is not an establishment to which the Bombay Shops and Establishments Act, 1948 is applicable and hence the notification fixing minimum wages for shops and establishments covered by Entry 17 in the Schedule to the Minimum Wages Act would not be applicable to the establishment of the petitioner at Rohana.

3. In appreciating the second contention urged on behalf of the petitioner, it may be seen that as per Entry 17 in the Schedule to the Minimum Wages Act the minimum wages can be fixed in respect of any shops or commercial establishments not being employment in any bank or an employment which is included under any of the other entries in the said Schedule. The Explanation to the said entry shows that the expressions "shops" and "commercial establishments" have the same meanings assigned to them under the Bombay Shops and Establishments Act, 1948. The notification of the State Government dated 24-3-1971 also shows that the said notification is applicable to the shops and commercial establishments as defined in the Bombay Shops and Establishments Act.

4. The learned Counsel for the petitioner contends that the definition of the expression "Commercial Establishments" in section 2(4) of the Bombay Shops and Establishments Act shows that it is applicable to an "establishment". He further states that the expression "establishment" is defined in section 2(8) of the said Act, according to which he contends that the commercial establishment must be one to which the Act applies. Emphasis is, therefore, placed upon section 1(4) of the said Act in which it is provided that the State Government can enforce the provisions of the Act in any local area having a population of 25000 or more. The submission therefore, is that since the population of the village Rohana is less than 25000 the notification in question is not applicable to the establishment of the petitioner at Rohana. In my view, the above submission on behalf of the petitioner is fallacious. So far as section 1(4) is concerned, it is not attracted at all for interpreting Entry 17 of the Schedule to the Minimum Wages Act. The explanation to the said entry only shows that the expression "shop" and "commercial establishments" shall have the same meaning assigned to them under the Bombay Shops and Establishments Act. In other words, the definitions of the above expressions in the above Act are borrowed for interpreting the said expressions used in the said Entry No. 17 in the Minimum Wages Act upon the well known principles of legislation by reference or legislation by incorporation. The said entry is thus not concerned with the question whether the Bombay Shops and Establishments Act is or is not applicable in the particular local areas or not.

5. A perusal of the definitions of the expression "establishment" given in section 2(8) of the Bombay Shops and Establishment Act would show that it is a comprehensive but illustrative definition that includes a shop, commercial establishment, residential hotel, restaurant, eating house, theatre etc. or other establishments to which the State Government by notification has made the provision of the said Act application.

The Commercial Establishment is thus one of the heads or items included in the definition of the expression "establishment". However the expression "commercial establishment" which is included in the definition of the word "establishment" finds an independent definition u/s 2(4) of the Act (ibid). It is, therefore, clear that although the expression "establishment" is used in the definition of the expression "commercial establishment" the said expression "establishment" cannot be and is not intended to be interpreted in the manner in which the expression "establishment" is defined in section 2(8) of the said Act, ibid. The expression "establishment" used in section 2(4) i.e. the definition of the word "commercial establishment" is used in my view in its ordinary sense and it means the establishment which carries on any business, trade or profession etc. as specified in the said definition. The above contention on behalf of the petitioner thus deserves to be rejected. Even assuming that section 1(4) of the Act (ibid) is applicable because the "establishment" as defined and which includes a commercial establishment should be one to which the Bombay Shops and Establishments Act. 1948 is applicable, there is no proper documentary evidence brought on record on behalf of the petitioner to show that the population of the village Rohana is below 25000. There is thus no merit in the above contention.

In the result, the instant writ petition fails and is dismissed. However, in the circumstances of the case, there would be no order as to costs in this petition.