

**(1974) 10 BOM CK 0012**

**Bombay High Court (Nagpur Bench)**

**Case No:** Spl. C. Application No. 126 of 1968 with Spl. C. Appls. No"s. 375 and 962 of 1968

Nagpur Corporation (Civil)  
Canteen

APPELLANT

Vs

Shri P.D. Kulkarni, Presiding  
Officer, First Labour Court,  
Nagpur and 9 others

RESPONDENT

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**Date of Decision:** Oct. 4, 1974

**Acts Referred:**

- Bombay Shops And Establishments Act, 1948 - Section 2, 2(25), 3
- Minimum Wages Act, 1948 - Section 5

**Citation:** (1975) MhLj 59

**Hon'ble Judges:** U.R. Lalit, J; M.N. Chandurkar, J

**Bench:** Division Bench

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**Judgement**

M.N. Chandubkar, J.

The main point which is involved in these three petitions is whether the petitioner's establishment which, according to the petitioner, is a canteen attached to the administrative offices of the City of Nagpur Corporation (hereinafter referred to as the Nagpur Corporation) is not covered by the notification dated 9-9-1963 issued by the Government of Maharashtra fixing minimum rates of wages in respect of the employment in any residential hotel, resturant or eating house as defined in the Bombay Shops and Establishments Act, 1948. The question arose in the applications made by the respondent Nos. 3 10 9 in Special Civil Application No. 126 of 1968 claiming the difference between the minimum wages prescribed by the notification and the wages actually paid to them. Now, according to the petitioner, he is not covered by the notification fixing the rates of wages because his establishment is a canteen which is being run in pursuance of an agreement entered into between him and the Municipal Commissioner acting on behalf of the Nagpur Corporation (Annexure No 2). This agreement is dated 4-6-1963. It provides, inter alia, that the

petitioner shall supply tea and other eatable only to the employees of the Corporation Office and also the persons who attend the office on business and that these articles shall be supplied at the rates fixed under that agreement. The petitioner was to pay the rent of Rs. 20 for the canteen room provided by the Nagpur Corporation. The agreement provided that the petitioner shall also arrange to fill water jugs provided to all the departments located in the office building and also refill them if they became empty during office hours. The agreement provided that the Corporation shall not allow any other party to sell articles of refreshment within the precincts of the Corporation and that the petitioner shall keep the stall open on all working days during office hours. This agreement was renewed in September 1967. Substantially the material terms remained the same. It is, however, not in dispute that the rates in respect of the articles sold by the petitioner prescribed by the agreement have now been increased and so also the rent for the canteen premises.

2. Now, according to the employees, the petitioner did not cater merely to the officers or employees of the Nagpur Corporation but there was free access to the premises of the petitioner to any other member of the public. According to them, the employees and persons from surrounding offices and establishments such as the Allahabad Bank, the Provincial Transport Office and other establishments often visited the canteen and really speaking these customers constituted a major part of the persons who took advantage of the canteen. The only ground on which the petitioner claimed that an establishment of the kind which he ran was exempted from the operation of the notification under the Minimum Wages Act was that he had received a communication from the Commissioner of Labour on 18-5-1965 in which it was stated that "canteens are not included in the scope of the enquiry of the Minimum Wages Committee and no minimum rates of wages are fixed for the employees employed therein."

3. The Labour Court, by the order dated 22-8-1966, gave a preliminary findings that the evidence before it showed that the employees of many offices near about were regular patrons of the petitioner, such as, the employees of the Allahabad Bank, Burma Shell Company, Narayan Garage, Assembly Staff, Maharashtra State Electricity Board, P. W. D. Electrical Division, etc. It also found that the number of outside customers who regularly visit the canteen far exceeded the persons from the Corporation office. Evidence was given by one of the usual customers from the Electricity Board, one Shri Jadhav, who stated that 200 persons like him were taking advantage of the canteen. It was found that the canteen abuts on the road and it is easily accessible. Thus, according to the Labour Court, the establishment of the petitioner had lost its original character of a canteen and though the establishment was in name a canteen, in reality and substance it was an eating house open to the public. After giving this preliminary finding and also holding that the Labour Court had jurisdiction to entertain the claim of the nature made by the employees, the Labour Court proceeded to pass an order holding that the employees were entitled

to the claim made by them seeking benefit of the notification fixing the minimum rates of wages. This order is challenged in Special Civil Application No. 126 of 1968.

4. In Special Civil Application No. 375 of 1968, the same petitioner is challenging the orders of the payment of Wages Authority whereby three of the petitioner's employees, Govindrao, Sheoram and Kisan, respondents Nos. 3 to 5 respectively in that petition, were held entitled to the payment of Rs. 60 each on account of illegal deduction, as also a compensation of Rs. 25. These claims were made on the basis that the employees were entitled to be paid in accordance with the rates prescribed by the notification referred to above. Before the Payment of Wages Authority also the petitioner again raised the question whether the notification applied to his establishment.

5. The third petition is Special Civil Application No. 962 of 1968 in which the very same employees except one Namdeo, again approach the Labour Court in order to get certain benefits which they claimed to be computed . These benefits were mainly in the form of leave with wages and overtime wages for work done on Sundays during the period 1962 to 31-12-1965. The commencement of the period has not been specifically mentioned except that it was in the year 1962. The question about the application of the notification under the Minimum Wages Act to the establishment of the petitioner was again raised. Here again, the finding was against the petitioner and the claims of the employees were substantially decreed in their favour. Since a common question was involved in these three petitions, they have been heard together. As already indicated, the main question was whether the notification prescribing minimum rates of wages was applicable in the case of the petitioner.

6. The learned counsel for the petitioner has relied on a decision of this Court in [Hotel Mazdoor Sabha and Another Vs. N.J. Alvares and Another](#) , In that case the petitioner Hotel Mazdoor Sabha, claimed a direction against the Chief Inspector, Shops and Establishments, and the State Government to apply the provisions of the Bombay Shops and Establishments Act, 1948, to (i) Central Railway Staff Canteen, Victoria Terminus, Bombay-1, (ii) Bombay Police Canteen at Crawford Market {Police Head-Quarters) and (iii) Government Law College Canteen, Churchgate, Bombay-1. While negating the contention of the petitioner this Court referred to the definition of "restaurant or eating house" in sub-section (25) of section 2 of the Shops and Establishments Act, and it was pointed out that the carrying on the business of supply of meals or refreshments is the first essential of the premises being "restaurant or eating house" under sub-section (25) of section 2 and staff canteens where an employer makes arrangements for supply of meals or refreshments without intending to carry on business thereof cannot be ""restaurant or eating house" within the meaning of the Act. It was also pointed out that wherever an employer makes merely arrangements for supply of meals or refreshments to its employees and does not carry on wholly or principally the business of supply of

meals or refreshments, the premises would not be "restaurant or eating house" within the meaning of the Act and the provisions of the Act would not be applicable to such establishments.

7. Now, in order to decide the contention raised before us we must first refer to the notification dated 9-9 1963 which notified that in exercise of the powers conferred by the proviso to clause (a) of sub-section (1) of section 3 read with sub-section (2) of section 5 of the Minimum Wages Act, 1948, the Government of Maharashtra, after considering the advice of the Committee, fixed, with effect from 2nd day of October 1963 the minimum rates of wages as set out in column 2 of the Schedule appended to the notification in respect of each zone specified in the same column as the rates payable by the month in such zone to the classes of employees employed in respect of the employment in any residential hotel, restaurant or eating house as defined in the Bombay Shops and Establishment Act, 1918, in the State of Maharashtra." The rates prescribed were shown in the Schedule. There can, therefore, be no doubt that before the rates prescribed in the notification referred to above can be said to be applicable to an employee employed in a restaurant or eating house, it must be shown that that establishment fell within the definition of "restaurant or eating house" as given in section 2 (25) of the Shops and Establishments Act. Section 2 (25) defines "restaurant or eating house" as meaning any premises in which is carried on wholly or principally the business of the supply of meals or refreshments to the public or a class of the public for consumption on the premises. Now, it cannot be disputed that when it is said that a canteen run by an employer is not a restaurant in the sense that the employer is not running it by way of business for the supply of meals or refreshments to the public, the canteen does not cease to be restaurant as such. A canteen is only a special kind of restaurant. The word "canteen" defined in the Chamber's Dictionary as meaning "a restaurant attached to an office, works, or the like." In the decision relied upon on behalf of the petitioner canteen has been held not to fall within the definition in section 2 (25) of the Shops and Establishments Act not because it is not a restaurant but because running of the canteen did not amount to carrying on the business of supplying meals or refreshment to the public or a class of the public. But if the restaurant does not fulfil the characteristics of a canteen and if it is shown that the person who runs the restaurant or the eating house is doing it by way of carrying on the business of supply of meals or refreshments to the public or even a class of the public for consumption on the premises, then it is difficult to hold that such an establishment will not be covered by section 2 (25) of the Shops and Establishments Act. The decision relied upon turned mainly on the consideration that the employees of the office establishment to which the restaurant was attached could not be said to be a class of the public and that as in the case of the Bombay Law College Canteen, the premises were not such where the employer or the college authorities were carrying on the business of supply of meals or refreshments, much less either to the public or to a class of the public. On the evidence in the instant case, which we find has

been rightly accepted by the learned Judge of the Labour Court it was obvious that the petitioner was not running the restaurant solely with a view to cater to the employees or officers of the Nagpur Corporation. He has thrown open his establishment to the public where people from the surrounding establishments often go for having their refreshments or tea. Indeed, the evidence appears to be that a large part of the sales is accounted for by the outside customers than by the employees or officers of the Corporation. It has ceased to be a canteen which it was originally intended to be. The petitioner's establishment was clearly a restaurant where the petitioner carried on principally the business of supply of refreshments to the public for consumption on the premises. The communication received from the Commissioner of Labour is, therefore, of no assistance to the petitioner.

8. It was vehemently urged before us that the agreement with the Nagpur Corporation limits the time during which the canteen should be kept open and it further also restricts the rates at which the different articles are to be sold. Now, a bare look at both the agreements, namely of the years 1963 and 1967, will show that there is no prohibition on the petitioner not to keep his restaurant open beyond the Corporation office hours. Paragraph 7 of the agreement on which reliance is placed is in the nature of an obligation merely to keep the establishment open on all working days during office hours, which means that he shall not keep it closed during those hours. This cannot be read as meaning that he is prohibited from keeping the establishment open even after office hours. The office hours of the Corporation are said to be from 10.30 a.m. to 5.30 p.m. but the evidence shows that the petitioner-establishment opens even before 10.30 a.m, and closes much later than 5.30 p.m. We are also not able to read the agreement as prohibiting the petitioner from selling the articles at different rates than those provided in the agreement to outside customers. At best, reading clauses (a) and (b) of paragraph 1 of the agreement it appears to us that those rates were specified in respect of sales of the articles to the employees of the Corporation and to "persons who attended the Corporation office on business." There is, therefore, no substance in the contention that the terms with regard to the rates and the hours of working were indicative of the nature of the establishment is not one which is attached exclusively to the Corporation Office and the petitioner, therefore, cannot validly lay any claim that his establishment is a canteen which is excluded from the definition of a "restaurant or eating house" in section 2 (25) of the Shops and Establishments Act. The learned Judge of the Labour Court was therefore, right in holding that the petitioner's establishment was covered by section 2 (25) and the employees of the petitioner were entitled to claim wages as prescribed in the minimum wages notification dated 9-9-1963.

9. When during the course of arguments on merits, we had indicated to the petitioner that we were not inclined to hold that the petitioner's establishment was exempted from the minimum wages notification and when on hearing the parties we were satisfied that the petitioner's challenge Special Civil Application No. 375 of

1968 had no substance, and when we also indicated to the respondent's counsel that the order of the Labour Court impugned by the petitioner in Special Civil Application No. 962 of 1968 granting claims on account of overtime wages for work alleged to have been done on Sundays and earned leave in one case could not be upheld, both the parties agreed that so far as the merits of the claims were concerned, they should be disposed of on the following terms which they have separately recorded under their signatures ":-

(1) For the figures of computed value and costs arrived at by the Labour Court in the Schedule to the order passed in I. D. A. No. 721 of 1965 consolidated with I. D. A. Nos. 722 to 728 of 1965 and the figures indicating the total amount awarded to the respective employee the following should be substituted:

(1) I. D. A. No. 721/65 Rs. 385/-

(2) I. D. A. No. 722/65 Rs. 415/-

(3) I. D. A. No 723/65 Rs. 160/-

(4) I. D. A. No. 724/65 Rs. 820/-

(5) I. D. A, No. 725/65 Rs. 444/-

(6) I. D. A. No. 726/65 Rs. 415/-

(7) I. D. A. No. 727/65 Rs. 385/-

(8) I. D. A. No. 728/65 Rs. 490/-.

(2) Petitioner Jagannath Shankarlal Dashottar shall deposit in the First Labour Court at Nagpur for payment to the respective employees half of the amount shown against them in the Schedule as above.

(3) Special Civil Application No. 375 of 1968 filed by petitioner shall stand dismissed as withdrawn and the petitioner shall also deposit the amount of Rs. 85/-and costs determined as payable to each of the three employees Govindrao, Authority by the order impugned in Special Civil Application No. 375 of 1968.

(4) The order passed by the First Labour Court in I. D. A. No. 2/66 consolidated with I. D. A. Nos. 3, 165, 1436, 1437, 1499 and 5073 of 1966 shall stand set aside except that the award regarding payment of Rs. 95/- to the respondent No. 8 Nathu will stand without prejudice for the purposes of this case. In the case of respondent No. 9 Mansaram, it is agreed that he shall be only entitled to receive from the petitioner Rs. 16.25 on account of seven day's wages at the rage of Rs. 65/- per month, retrenchment compensation Rs, 130/-at the same rate, as also Rs, 65/- on account of notice pay at the same rate, The total amount to which he will be entitled being Rs. 211.25.

(5) The amounts which the petitioner is liable to pay as aforesaid are in addition to the amount of Rs, 500/- which he was required to deposit in Court as a condition of a stay order issued on 10-2-1968. This amount which has already been received by the respondents Nos. 3 to 9 shall be retained by them. The amounts referred to above will be received by the employees in full satisfaction of their claims in regard to these three petitions.

(6) The petitioner agrees to deposit the amounts due from his as aforesaid within one month from today in the first Labour Court at Nagpur.

(7) There will be no order as to the costs of these petitions.