SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

The Statesman Limited vs.govt. Of Nct of Delhi & Ors.

The Statesman Limited vs.govt. Of Nct of Delhi & Ors.

SooperKanoon Citation : sooperkanoon.com/1226708

Court : Delhi

Decided On : Nov-18-2019

Appellant : The Statesman Limited

Respondent : Govt. Of Nct of Delhi & Ors.

Advocate for Pet/Ap. : Mr. Samar Bansal, Dr. Vijendra Mahndiyan, Ms. Pallavi Awasthi

Judgement :

$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + WP(C) 9497/2015 & CM APPL. 22279/2015, CM APPL. 32774/2017 THE STATESMAN LIMITED Through: Mr. Samar Bansal, Adv. .....

... Petitioner
versus GOVT. OF NCT OF DELHI & ORS. .....

... RESPONDENTS
Through: Dr. Vijendra Mahndiyan and Ms. Pallavi Awasthi, Adv. for R-3 THE STATESMAN LIMITED + WP(C) 10534/2015 & CM APPL. 32773/2017 GOVT. OF NCT OF DELHI & ORS. .....

... Petitioner
Through: Mr. Samar Bansal, Adv. versus .....

... RESPONDENTS

Through: Dr. Vijendra Mahndiyan and Ms. Pallavi Awasthi, Adv. for R-3 CORAM: HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT

1811.2019 Has the petitioner suffered heavy cash losses consecutively, for the % 1. years 2008-2009, 2009-2010 and 2010-2011, so as to be insulated from the requirement of paying revised wages, in terms of the Majithia Wage Board Award (hereinafter referred to as the Majithia Wage Board Award), which was implemented on 11th November, 2011 ?. WP (C) 9497/2015 & WP (C) 10534/2015 Page 1 of 31 2. This is the precise issue which arises for consideration in these writ petitions which, inasmuch as the questions involved are inter-connected, are decided by this common judgment. Facts 3. The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter referred to as the Working Journalists Act), which came into effect on 20th December, 1955, was enacted to regulate conditions of services of working journalists and other persons employed in newspaper establishments.

4. Section 9 of the Working Journalists Act empowers the Central Government to constitute a Wage Board, for fixing or revising rates of wages in respect of working journalist, thereunder, and reads thus: 9. Procedure for fixing and revising rates of wages.- For the purpose of fixing or revising rates of wages in respect of working journalists under this Act, the Central Government shall, as and when necessary, constitute a Wage Board which shall consist of-- (a) three persons representing employers in relation to newspaper establishments; (b) three persons representing working journalists; (c) four independent persons, one of whom shall be a person who is, or has been, a Judge of a High Court or the Supreme Court and who shall be appointed by that Government as the Chairman thereof. WP (C) 9497/2015 & WP (C) 10534/2015 Page 2 of 31 5. Sections 10 and 11 of the Working Journalists Act set out the manner in which the Wage Board, constituted under Section 9, is to proceed, and make its recommendations.

6. Section 12 requires the Central Government to make an order, in terms of the said recommendations, with or without modifications, and Section 13 entitles every

working journalist, on the coming into operation of the order of the Central Government under Section 12, to payment, by his employer, of wages, at a rate not less than the rates specified in the said order. For ready reference, Sections 12 and 13 of the Working Journalists Act are reproduced thus: 12. Powers recommendations of the Wage Board.-. of Central Government to enforce the receipt of (1) As soon as may be, after the recommendations of the Board, the Central Government shall make an order in terms of the recommendations or subject to such modifications, if any, as it thinks fit, being modifications which, in the opinion of the Central Government, do not effect important alterations in the character of the recommendations. (2) Notwithstanding anything contained in sub-section (1), the Central Government may, if it thinks fit,-- such modifications the (a) make recommendations, not being modifications of the nature referred to in sub-section (1), as it thinks fit: in Provided that before making any such modifications, the Central Government shall cause notice to be given to all persons likely to be affected thereby in such manner as may be prescribed, and shall take into account any representations which they may make in this behalf in writing; or (b) the recommendations or any part thereof to the Board, in which case, the Central refer WP (C) 9497/2015 & WP (C) 10534/2015 Page 3 of 31 7. shall consider Government further recommendations and make an order either in terms of the recommendations or with such modifications of the nature referred to in sub-section (1) as it thinks fit. its (3) Every order made by the Central Government under this section shall be published in the Official Gazette together with the recommendations of the Board relating to the order and the order shall come into operation on the date of publication or on such date, whether prospectively or retrospectively, as may be specified in the order.

13. Working journalists entitled to wages at rates not less than those specified in the order - On the coming into operation of an order of the Central Government under section 12, every working journalist shall be entitled to be paid by his employer wages at the rate which shall in no case be less than the rate of wages specified in the order. Section 13C, like Section 9, provides for constitution of a Wage Board, by the Central Government, for the purposes of fixing or revising rates of wages in respect of non-journalist newspaper employees, which reads thus: 13C. Wage Board for fixing or revising rates of wages in respect of non-

journalist newspaper employees.- For the purpose of fixing or revising rates of wages in respect of non- journalist newspaper employees under this Act, the Central Government shall, as and when necessary, constitute a Wage Board which shall consist of- three persons three persons representing employers in relation to (a) newspaper establishments; (b) newspaper employees, and four independent persons, one of whom shall be a (c) person who is, or has been, a Judge of a High Court or the representing journalist non- WP (C) 9497/2015 & WP (C) 10534/2015 Page 4 of 31 Supreme Court and who shall be appointed by that Government as the Chairman thereof. Section 13D of the Working Journalists Act makes the provision 8. of Section 10 to 13A thereof, applicable, mutatis mutandis, to the Wage Board constituted under Section 13C, and reads as under:

9. 13D. Application of certain provisions.- The provisions of sections 10 to 13A shall apply to, and in relation to, the Board constituted under section 13C, the Central Government and non- journalist newspaper employees, subject to the modifications that- (a) the references to the Board and working journalists therein, wherever they occur, shall be construed respectively as references to the Board constituted under section 13C and to non- journalist newspaper employees; (b) the references in sub- section (3) of section 11 to section 9 shall be construed as a reference to section 13C; and (c) the references in section 13 and section 13A to section 12 shall be construed as references to section 12 read with this section. By virtue of Section 13D, non-journalist newspaper employees, in newspaper establishments, would also be entitled to payment of wages at the rates prescribed by the Wage Board constituted under Section 13C of the Working Journalists Act.

10. In exercise of the powers conferred by Sections 9 and 13 of the Working Journalists Act supra, the Central Government, vide Notification dated 24th May, 2007, constituted a Wage Board, under the WP (C) 9497/2015 & WP (C) 10534/2015 Page 5 of 31 Chairmanship of Justice G.R. Majithia, to determine applicable rates of wages for working journalists, and non-journalist newspaper employees.

11. The Majithia Wage Board submitted its final recommendations to the Central Government on 31st October, 2010. The recommendations were accepted, in toto,

by the Central Government, and were notified on 11th November, 2011, and came to be known as the Majithia Wage Board Award.

12. The Majithia Wage Board Award was challenged, by various newspaper establishments and other entities, before the Supreme Court, by way of writ petitions preferred under Article 32 of the Constitution of India, which were consolidated, and heard.

13. The lead matter, in the said batch of petitions was WP (C) 246/2011 (ABP Private Limited v. Union of India1).

14. For the purposes of adjudication of these writ petitions, it is not necessary to enter into the fine niceties of the judgment of the Supreme Court, which examined the entire genesis of the Working Journalists Act and the concept of fixing of wages for working journalists and other employees employed in other newspaper establishments. Suffice it to state that the Supreme Court ultimately dismissed all the writ petitions and, upholding the recommendations of the Majithia Wage Board, directed that the wages, as revised/determined by the Majithia Wage 1 (2014) 3 SCC327WP (C) 9497/2015 & WP (C) 10534/2015 Page 6 of 31 Board, would be payable from 11th November, 2011, i.e. the date of notification of the said recommendations by the Government of India.

15. It was directed, further, that arrears upto March, 2014 would be paid to all eligible persons in four equal installments, within one year from the date of the judgment (which was pronounced on 7th February, 2014), and that revised wages would continue to be paid, thereafter, in terms of the recommendations of the Majithia Wage Board. For ready reference, paras 71 to 73 of the judgment of the Supreme Court may be reproduced thus: 71. It is useful to refer Section 12 of the Act which deals with the powers of Central Government to enforce recommendations of the Wage Board. It reads as under: 12. Powers of Central Government recommendations of the Wage Board - to enforce the Board, (1) As soon as may be, after the receipt of the the Central recommendations of Government shall make an order in terms of the recommendations or subject to such modifications, if any, as it thinks fit, being modifications which, in the opinion of the Central Government, do not effect important alterations the

recommendations. (2) Notwithstanding anything contained in sub- section (1), the Central Government may, if it thinks fit,- the character of in such modifications (a) make the recommendations, not being modifications of the nature referred to in sub-section (1), as it thinks fit: in such Provided modifications, the Central Government shall cause before making that any WP (C) 9497/2015 & WP (C) 10534/2015 Page 7 of 31 notice to be given to all persons likely to be affected thereby in such manner as may be prescribed, and shall into account any representations which they may make in this behalf in writing; or take (b) refer the recommendations or any part thereof to the Board, in which case, the Central Government shall consider its further recommendations and make an order either in terms of the recommendations or with such modifications of the nature referred to in sub-section (1) as it thinks fit. order made by the Central (3) Every Government under this section shall be published in the Official Gazette the recommendations of the Board relating to the order and the order shall come into operation on the date of publication or on such date, whether prospectively or retrospectively, as may be specified in the order. together with 72. Thus, it is the prerogative of the Central Government to accept or reject the recommendations of the Wage Boards. There is no scope for hearing the parties once again by the Central Government while accepting or modifying the recommendations, except that the modifications are of such nature which alter the character of the recommendations and such modification is likely to affect the parties. The mere fact that in the present case, the Government has not accepted a few recommendations will not automatically affect the validity of the entire report. Further, the Government has not accepted all those suggestions including those pertaining to retirement age, etc. as these are beyond the mandate for which the Wage Boards were constituted. Regarding fixation of pay, assured career development, there have been proposals in the recommendations which are in the manner of providing higher pay scale after completion of certain number of years which cannot be treated as time bound promotion.

73. Accordingly, we hold that the recommendations of the Wage Boards are valid in law, based on genuine and acceptable considerations and there is no valid ground for interference under WP (C) 9497/2015 & WP (C) 10534/2015 Page 8 of 31 Article 32 of the Constitution of India. Consequently, all the writ petitions are

dismissed with no order as to costs. 16. As a result of the dismissal, of the challenges to the recommendations, as contained in the Majithia Wage Board Award, all newspaper establishments were bound to act in accordance therewith.

17. This legal position is beyond cavil.

18. The Statesman Mazdoor Union (Respondent No.3 herein and referred to, hereinafter, as the Union) filed an application, under Section 17(1) of the Working Journalists Act, expressing its grievance that the petitioner had not disbursed wages, to the members of the Union, i.e. the employees of the petitioner, in terms of the Majithia Wage Board. A calculation chart, showing the specific amount due to each workman, on whose behalf the application was preferred, was annexed thereto, and it was, accordingly, prayed that proceedings be initiated, under Section 17(1) of the Working Journalists Act, against the petitioner and that, in the event of refusal or default, by the petitioner, to disburse wages in terms of the Majithia Wage Board, a recovery certificate be issued. Section 17(1) of the Working Journalists Act may be reproduced, for ready reference, thus: 17. Recovery of money due from an employer.- (1) Where any amount is due under this Act to a newspaper employee from an employer, the newspaper employee himself, or any person authorised by him in writing in this behalf, or in the case of the death of the employee, any member of his family may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to him, and if the State Government, or such authority, as the State Government may specify in this behalf, is satisfied that any WP (C) 9497/2015 & WP (C) 10534/2015 Page 9 of 31 amount is so due, it shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue. 19. Notice, on the aforesaid application of the Union, was issued, by the competent authority under the Working Journalists Act (the Deputy Labour Commissioner, referred to, hereinafter, as the Competent Authority), on receipt whereof the petitioner filed a response to the application of the Union, vide letter dated 21st July, 2014.

20. Reliance was placed, by the petitioner, in the said response, on Clause 21 of the Majithia Wage Board, which reads thus: 21. Mode of payment of arrears- The

arrears payable from the date of enforcement of the Award, if any, as a result of retrospective implementation, shall be paid in three equal installments after every six months from the date of enforcement of the Award and the first installment shall be paid within three months. Provided that - The newspaper establishments, who suffered heavy cash losses consequently in three accounting years preceding the date of implementation of the Awards, shall be exemption payment of any arrears. However, these newspaper establishments would be required to fix salaries or wages of their employees on notional basis in the revised scales of pay with effect from the date of implementation of the Award i.e. 1st July 2010. Relying on the proviso to Clause 21 of the Majithia Wage Board, the petitioner contended, in its communication dated 21st July, 2014 filed by way of response to the application filed by the Union, before the Competent Authority, that, as it had incurred heavy cash losses during WP (C) 9497/2015 & WP (C) 10534/2015 Page 10 of 31 the financial years 2008-2009, 2009-2010 and 2010-2011, it was exempted from the requirement of payment of arrears of wages.

21. In support of this contention, the petitioner submitted a certificate, dated 16th July, 2014 from M/s Ford, Rhodes, Parks and Company, a Chartered Accountants Firm at Kolkata, which reads thus: FORD, RHODES, PARKS & CO. CHARTERED ACCOUNTANTS CERTIFICATE We certify from the audited accounts of The Statesman Limited that the profit/(loss) position and the accumulated losses of the company for the financial years 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13 is as below - [Rs. in lakhs]. Particulars Profit / (loss) for the year 2008-09 2009-10 2010-11 2011-12 2012-13 (191.12) 35.60 7.41 (165.21) (96.43) (200.14) (164.14) (156.73) (321.94) (418.37) Accumula ted losses Date-16/07/2014 Place - Kolkata Balance Sheets, for the said years, were also placed on record.

22. The complete order sheets of the proceedings, before the Competent Authority, have been placed on record. It is observed, therefrom, that on 19th February, 2014, the following proceedings are recorded : WP (C) 9497/2015 & WP (C) 10534/2015 Page 11 of 31 Sh. Shivaji Samaddar (GM-Delhi) is present along with Sh. Vinayak Mehrotra (Advocate) Sh. Satya Prakash and others are present ARM - ARW - A Matter discussed. Sh. Shivaji has filed balance sheet of the Mgmt. for the period 2008-2009, 2009-2010 and 2010-2011 and 2013-2014 & a

certificate dated 15/
of their chartered accountants. Both the parties are agreed on the following issues

1) Wage board is enforceable from 11/11/11.

2) As per board award arrears in four equal installment is to be given within one year from date of the Supreme Court order dated 7/2/14.

3) As per proviso of clause 21 of wage board exemption from paying arrear is granted only in case of heavy cash loss.

4) As per balance sheet for the year 2008-2009, 2009-2010, 2010-2011financial status is as under:-

"YEAR NET CURRENT ASSET LOSS SETTLEME -NT LOSS (in lakh) 2008-2009 61,89,68,454/- 2,00,14,406/- 114.21/- 2009-2010 64,69,47,145/- 1,64,14,490/- 50.06/- 2010-2011 58,96,93,7961- 1,56,73,017/- 19.40/- As per mgmt. there is heavy loss and arrear cannot be paid. According to AR of workmen, there is no heavy loss and arrears & is due to be paid. Both parties don't want to add anymore. The matter is concluded. 23. The Competent Authority adjudicated the aforesaid application, of the Union, preferred under Section 17(1) of the Working Journalists Act, vide orders dated 21st July, 2015 and 19th August, 2015 , which form the subject matter of challenge in these writ petitions. Apropos the submission that the petitioner had suffered heavy cash losses, during the WP (C) 9497/2015 & WP (C) 10534/2015 Page 12 of 31 three years immediately preceding the implementation of the Award, the Competent Authority observed that the balance sheet, of the petitioner, for the year ending 31st March, 2010, reflected a profit of 1.64 crores. It was also observed that the balance sheet, for the year 2010-2011 reflected current assets, of the petitioner, to be 64,69,47,145/- and the gross income of the petitioner, during the financial year 2009-2010, to be 45,31,79,823/-. A comparison of the alleged loss suffered by the petitioner, with its current assets, as reflected in its balance sheets for the relevant years, it was held, did not indicate the petitioner to be in a shaky financial position, so as to be exempted from the requirement of paying revised wages as per the Majithia Wage Board Award. It was also observed, in this context, that the petitioner fell within

Class V, in the Classification of Establishments, as contained in the Majithia Wage Board Award.

24. Aggrieved thereby, the petitioner has filed the present writ petitions, both of which are directed against the orders, dated 21st July, 2015 and 19th August,2015, of the Competent Authority. WP (C) 9497/2015 challenges the impugned Award vis--vis 55 workmen, whereas WP (C) 10534/2015, challenges the Award vis--vis nine other workmen. Rival contentions 25. I have heard Mr. Samar Bansal, learned counsel appearing for the petitioner and Dr. Vijendra Mahndiyan, appearing for the Union, in these writ petitions, at length and have perused the record. Written submissions have also been filed by the petitioner as well as by Respondent No.3. WP (C) 9497/2015 & WP (C) 10534/2015 Page 13 of 31 26. Arguing on behalf of the petitioner, Mr. Samar Bansal submits as under: (i) The Competent Authority had erred in classifying the petitioner under Class V of the Classes of Establishments in the Majithia Wage Board Award. No opportunity had been extended, to the petitioner, to advance any submissions on the issue of classification. On merits, too, the petitioner merited classification under Class VI, rather than under Class V, in view of Explanation (b) to Clause 6 of the Award, which read thus : 6. Classification of news agency- ***** than Explanation - (b) Gross revenue of the circulation and advertisement clubbed together derived by a newspaper establishment, other the advertisement revenue is less than 50% of its aforesaid revenue, then it should be placed in the class next below the class in which it would fail on the basis of its total average gross revenue. the one failing in Class VIII, if In this context, reliance has also been placed, by the petitioner, on the definition of gross revenue, as contained in Clause 2(5) of the Award, which reads thus : (5) "Gross Revenue" of a newspaper establishment (other than news agency) means the total revenue derived by the establishment from all sources of its newspaper business, including circulation and advertisement in its newspaper or newspapers, and also include the income from the assets acquired and investments made by it out of funds earned in the newspaper business. WP (C) 9497/2015 & WP (C) 10534/2015 Page 14 of 31 (ii) While exempting establishments which had suffered from heavy cash losses, during the three years immediately preceding its implementation, Clause 21 of the Award did not define the expression heavy cash losses. It had been held by the Supreme Court, in

various decisions, including Management of Kirlampudi Sugar Mills Ltd. v. The Industrial Tribunal A.P.2, Workmen of Gujarat Electricity Board v. The Gujarat Electricity Board3, Filmistan Private Limited v. Workmen4, Hindustan Antibiotics Ltd. v The Workmen5, The Indian Link Chain Manufacturers Ltd. v Their Workmen6 and The Bharatkhand Textile Mfg Co. Ltd. v Textile Labour Association, Ahmedabad7, that while examining the aspect of revision of wages, in establishments, the capacity of the establishment to pay the revised wages was a pre- eminent consideration. As such, while examining the issue of whether the petitioner had, or had not, suffered heavy cash losses, during the years 2008-2009, 2009-2010, 2010-2011, the Competent Authority ought to have kept in mind the capacity to pay of the petitioner. Viewed thus, as the petitioner had been suffering losses continuously, it could not be said to be possessed of the financial wherewithal to disburse revised wages to the workmen of the Union, as per the terms of the Majithia Wage Board Award. 2 (1973) 3 SCC6263 (1969) 1 SCC2664 (1966) 1 LLJ7445 (1967) 1 SCR6526 (1971) 2 SCC7597 (1960) 3 SCR329WP (C) 9497/2015 & WP (C) 10534/2015 Page 15 of 31 (iii) Reliance was placed on the certificate, dated 16th July, 2014 supra, issued by M/s Ford, Rhodes, Parks and Company, which showed accumulated losses, of the petitioner, for the years 2008-2009, 2009-2010 and 2010-2011, of 200.14 lakhs, 164.14 lakhs and 156.73 lakhs. (iv) The method of analysis, followed by the Competent Authority, to assess whether the petitioner was, or was not, suffering from heavy cash losses, was unknown to all principles of law. Comparison of losses, with assets, was foreign to well known principles of accounting. Moreover, such an exercise was unrealistic, as the petitioner could not be expected to sell its assets to compensate its losses. Were the petitioner to sell its assets, it would anyway be driven out of business as it would be unable for the petitioner to function. (v) That apart, the net current assets, of the petitioner, had been worked out by deducting its current liabilities from its current assets. The current assets of the petitioner included inchoate assets, which would become available for exploitation, only consequent on realization, such as moneys to be recovered from sundry debtors, loans and advances and the like. Such amounts could not be treated as contributing to the liquidity position of the petitioner, so as to constitute a corpus, from which it could make payment of revised wages, as directed by the Majithia Wage Board Award.

WP (C) 9497/2015 & WP (C) 10534/2015 Page 16 of 31 (vi) The petitioner has also sought to question the correctness of the finding, of the Competent Authority, that the establishment of the petitioner would fall under Class V of the Classes of Establishments as per the Majithia Wage Board Award. The case of the petitioner is that it would fall, instead, under Clause VI thereof. Clause 6 of the Majithia Wage Board Award, which classified news agencies into Classes I to VIII may be reproduced in this context, thus : Class Gross Revenue Class Gross Revenue Rupees One Thousand Crore and above Five Rupees Hundred Crore and above but less than Rupees One Thousand Crore One Rupees Hundred Crore and above but less than Rupees Five Hundred Crore Rupees Fifty Crore and above but than Rupees One Hundred Crore less I II III IV V VI VII Rupees Ten Crore and above but less than Rupees Fifty Crore Rupees Five Crore and above but less than Rupees Ten Crore Rupees One Crore and above but less than Rupees Five Crore VIII than Rupees Less One Crore The petitioner seeks to capitalize on Explanation (b) in the afore- extracted Clause 6 of the Majithia Wage Board Award. This clause stipulates that, if the advertisement revenue of an establishment is less than 50% of the gross revenue of the establishment, the establishment would be eligible to be placed in WP (C) 9497/2015 & WP (C) 10534/2015 Page 17 of 31 the class next below the class in which it would fall on the basis of its total average gross revenue.

27. Arguing per contra, Dr. Mahndiyan submits that there was no error in the findings of the Competent Authority, or in its final decision. Dr. Mahndiyan points out that the certificate dated 16th July, 2014 supra, issued by M/s Ford, Rhodes, Parks and Company itself indicates that, during the years 2009-2010 and 2010-2011, the petitioner had earned profits. Apropos the classification of the petitioner, Dr. Mahndiyan points out that the advertisement revenue of the petitioner constituted 67%, 60% and 65% of its gross revenue, during the years 2008-2009, 2009-2010 and 2010-2011, so that the petitioner was incorrectly classified under Class V of the Majithia Wage Board Award and could not claim downgradation of its classification on the basis of Explanation (b) to Clause 6 of the Award. Dr. Mahndiyan also expressed surprise at the manner in which the chartered accountant had issued two certificates, the first reflecting profits having been earned during the years 2009-2010 and 2010-2011, on 16th July, 2014, and the

second, issued less than four months thereafter, reflecting losses having been incurred during all the three years 2008-2009, 2009-2010 and 2010-2011. He submits that the reference to a decision of the High Court of Calcutta, was neither here nor there, as no copy of the said judgment had even been produced by the petitioner, and, moreover, the said litigation apparently involved two other parties, to which Respondent No.3 was a stranger.

28. Dr. Mahndiyan submits that, in any event, the legal position has been set at rest by the subsequent judgment of the Supreme Court in WP (C) 9497/2015 & WP (C) 10534/2015 Page 18 of 31 Avishek Raja v. Sanjay Gupta8, which, explaining the concept of heavy cash losses, as contemplated by the Majithia Wage Board Award, contradistinguished the concept from that of mere financial difficulty. He places especial reliance on para 28 of the report, which reads thus : 28. There is nothing either in the provisions of the Act or in the terms of the Wage Board Award which would enable us to hold that the benefits of the Award would be restricted to the regular employees and not contractual employees. In this regard, we have taken note of the definition of newspaper employees, working journalist and non-journalist newspaper employees as defined in Sections 2(c), 2(f) and 2(dd) of the Act. Insofar as variable pay is concerned, as already noticed and extracted in para 10 above, this Court while dealing with the concept of variable pay has taken the view that the said relief has been incorporated in the Majithia Wage Board Award in order to give fair and equitable treatment to employees of newspapers. Therefore, no question of withholding the said benefit by taking any other view with regard to variable pay can arise. In fact, a reading of the relevant part of the Award would go to show that the concept of variable pay which was introduced in the Award stems from grade pay contained in the Report of the Sixth Pay Commission and was intended to bring the working journalist and non-journalist employees covered by the Act on a par with the Central Government employees to the extent possible. So far as the concept of heavy cash losses is concerned, we are of the view that the very expression itself indicates that the same is different from mere financial difficulties and such losses apart from the extent of being crippling in nature must be consistent over the period of time stipulated in the Award. This is a question of fact that has to be determined from case to case. (Emphasis supplied) Analysis 29. It has firstly been

sought to be contended, by the petitioner, that it was not extended any opportunity, by the competent authority, to make submissions on the Class in which it would fall. The somewhat 8 (2017) 8 SCC435WP (C) 9497/2015 & WP (C) 10534/2015 Page 19 of 31 surprising stand, adopted by the petitioner in this regard, is that it was under the impression that the Competent Authority would first decide the issue of the applicability, of Clause 21 of the Majithia Wage Board Award, to the petitioner, and would, thereafter, extend the petitioner a further opportunity to argue on its classifiability. A bare perusal of the record of proceedings dated 21st July, 2015 in WP (C) 9497/ 2015 and 19th August, 2015 in WP (C) 10534/ 2015 clearly belies this submission. At the conclusion of the said record of proceedings, it is clearly noted that both parties submitted, before the Competent Authority, that they had nothing further to add. These proceedings stand signed by the representatives of the parties and, in fact, the petitioner was represented by learned counsel. There is nothing, in the impugned orders, which could convey the impression that the Competent Authority was deciding any preliminary issue, and reserving the right, to the petitioner, to argue on other aspects, at a later stage. In view thereof, it cannot be said that the Competent Authority has denied, to the petitioner, any adequate opportunity, while arriving at its finding that the petitioner establishment was liable to be classified under Class V. Ex facie, this submission appears to be an afterthought.

30. Though the objection, of the petitioner, to the said finding of the Competent Authority, as contained in the impugned order dated 21st July, 2015 in WP (C) 9497/ 2015 and 19th August, 2015 in WP (C) 10534/ 2015 is liable to be rejected even on this score, I find the submission to be bereft of merit, as well. It has specifically been pointed out, by Respondent No.3, in its written submission, that, on the basis of the figures contained in the balance sheets of the petitioner for the relevant WP (C) 9497/2015 & WP (C) 10534/2015 Page 20 of 31 years, its advertisement revenue constituted 67%, 60% and 65% of its gross revenue. This submission has not been sought to be traversed, in the written submissions filed by the petitioner. That apart, the submission also appears to be borne out from the figures contained in the relevant balance sheets of Respondent No.3 during the aforesaid three years, as placed on record before the Competent Authority. No occasion, therefore, arises, for this Court to interfere therewith.

31. The submission of Mr. Bansal that the competent Authority had erred in classifying the petitioner establishment under Class V, in the classification contained in Clause 6 of the Majithia Wage Board Award, is, therefore rejected.

32. Having heard learned counsel for the rival parties at length and having perused the material on record, I am of the opinion that, in view of the judgment of the Supreme Court in Avishek Raja8, the issue in controversy, on merits, is no longer res integra. Avishek Raja8 adjudicated contempt petitions, filed by workmen, alleging non- compliance with the terms of the Majithia Wage Board Award, inasmuch as they had not been paid revised wages in terms thereof. As in the present case, the managements of the contemnor-newspaper establishments, had sought to take sanctuary under the proviso to Clause 21 of the Award, claiming that they had been suffering heavy cash losses, during the years 2008-2009, 2009-2010 and 2010-2011, thereby insulating them from the requirement of payment of revised wages in terms of the Award. While holding that no contempt had been committed, inasmuch as the non-payment of revised wages, as directed WP (C) 9497/2015 & WP (C) 10534/2015 Page 21 of 31 by the Majithia Wage Board Award was owing, at worst, to an erroneous understanding of the terms of the Award, by the contemnor-newspaper establishments, the Supreme Court, nevertheless, held, in unmistakable and unequivocal terms, that the Majithia Wage Board Award was required, to be implemented in full. Paras 25 to 29 of the report merit reproduction, in extenso, thus: 25. The Majithia Wage Board Award has been approved by this Court by its judgment dated 7-2-2014 passed in ABP (P) Ltd. v. Union of India1. The Award, therefore, has to be implemented in full. While it is correct that issues concerning, (i) Clause 20(j); (ii) whether the Award applies to contractual employees; (iii) whether it includes variable pay; and (iv) the extent of financial erosion that would justify withholding of payment of arrears has not been specifically dealt with either in the Award or in the judgment of this Court, there can be no manner of doubt that a reiteration of the scope and ambit of the terms of the Award would necessarily be called for and justified. This is what we propose to do hereinafter so as to ensure due and full compliance with the order(s) of the Court. Insofar as the highly contentious issue of Clause 20(j) of 26. the Award read with the provisions of the Act is concerned, it is clear that what the Act guarantees to each newspaper employee as defined in Section 2(c) of the Act is

the entitlement to receive wages as recommended by the Wage Board and approved and notified by the Central Government under Section 12 of the Act. The wages notified supersedes all existing contracts governing wages as may be in force. However, the legislature has made it clear by incorporating the provisions of Section 16 that, notwithstanding the wages as may be fixed and notified, it will always be open to the employee concerned to agree to and accept any benefits which is more favorable to him than what has been notified under Section 12 of the Act. Clause 20(j) of the Majithia Wage Board Award will, therefore, have to be read and understood in the above light. The Act is silent on the availability of an option to receive less than what is due to an employee under the Act. Such an option really lies in the domain of the doctrine of waiver, an issue that does not arise in the present case in view of the specific stand of the employees concerned in the present WP (C) 9497/2015 & WP (C) 10534/2015 Page 22 of 31 case with regard to the involuntary nature of the undertakings allegedly furnished by them. The dispute that arises, therefore, has to be resolved by the fact-finding authority under Section 17 of the Act, as adverted to hereinafter.

27. In any event having regard to the legislative history and the purpose sought to be achieved by enactment of the Act i.e. to provide the minimum if not a fair wage to newspaper employees, the ratio of the pronouncement in Bijay Cotton Mills Ltd. v. State of Ajmer9, holding wages notified under the Minimum Wages Act, 1948 to be non-negotiable would squarely govern the wages notified under the present Act. Para 4 of the Report in Bijay Cotton Mills Ltd.9 which deals with the above issue is extracted hereinbelow for specific notice: (AIR p.

35) 4. It can scarcely be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but also the maintenance of health and decency, is conducive to the general interest of the public. This is one of the directive principles of State policy embodied in Article 43 of our Constitution. It is well known that in 1928 there was a Minimum Wages Fixing Machinery Convention held at Geneva and the resolutions passed the International Labour Code. The Minimum Wages Act is said to have been passed with a view to give effect to these resolutions. (Vide South India Estate Labour Relations Organisation v. State of Madras10.) that convention were embodied in in If the labourers are to

be secured in the enjoyment of minimum wages and they are to be protected against exploitation by their employers, it is absolutely necessary that restraints should be imposed upon their freedom of contract and such restrictions cannot in any sense be said to be unreasonable. On the other hand, the employers cannot be heard to complain if they are compelled to pay minimum wages to their labourers even though the labourers, on account of their poverty and helplessness are willing to work on lesser wages. (emphasis supplied) 9 AIR 1955 SC3310 AIR1955 Mad 45 at p. 47 WP (C) 9497/2015 & WP (C) 10534/2015 Page 23 of 31 28. There is nothing either in the provisions of the Act or in the terms of the Wage Board Award which would enable us to hold that the benefits of the Award would be restricted to the regular employees and not contractual employees. In this regard, we have taken note of the definition of newspaper employees, working journalist and non-journalist newspaper employees as defined in Sections 2(c), 2(f) and 2(dd) of the Act. Insofar as variable pay is concerned, as already noticed and extracted in para 10 above, this Court while dealing with the concept of variable pay has taken the view that the said relief has been incorporated in the Majithia Wage Board Award in order to give fair and equitable treatment to employees of newspapers. Therefore, no question of withholding the said benefit by taking any other view with regard to variable pay can arise. In fact, a reading of the relevant part of the Award would go to show that the concept of variable pay which was introduced in the Award stems from grade pay contained in the Report of the Sixth Pay Commission and was intended to bring the working journalist and non-journalist employees covered by the Act on a par with the Central Government employees to the extent possible. So far as the concept of heavy cash losses is concerned, we are of the view that the very expression itself indicates that the same is different from mere financial difficulties and such losses apart from the extent of being crippling in nature must be consistent over the period of time stipulated in the Award. This is a question of fact that has to be determined from case to case.

29. Having clarified all doubts and ambiguities in the matter and upon holding that none of the newspaper establishments should, in the facts of the cases before us, be held guilty of commission of contempt, we direct that henceforth all complaints with regard to non-implementation of the Majithia Wage Board Award or otherwise

be dealt with in terms of the mechanism provided under Section 17 of the Act. It would be more appropriate to resolve such complaints and grievances by resort to the enforcement and remedial machinery provided under the Act rather than by any future approaches to the courts in exercise of the contempt jurisdiction of the courts or otherwise. 33. The Supreme Court has, in the paragraphs extracted hereinabove, clarified, in unmistakable terms, that the question of whether any particular establishment had, or had not, suffered, heavy cash losses WP (C) 9497/2015 & WP (C) 10534/2015 Page 24 of 31 could not be decided on the test of whether the requirement of payment of revised wages, in terms of the Award, would result in financial difficulties, to the establishment, or not. The Supreme Court contradistinguished the concept of heavy cash losses, with that of mere financial difficulties. Para 28 of the report in Avishek Raja8 makes it clear that an establishment could be treated as having suffered heavy cash losses, during the years 2008-2009, 2009-2010 and 2010-2011 - which constitute the three relevant years immediately preceding the publication of the Majithia Wage Board Award - only if the losses suffered by the establishment were (i) crippling and (ii) consistent over the years specified in the Award, i.e. over the aforesaid three financial years 2008-2009, 2009-2010 and 2010-2011.

34. Neither of these requirements, in my view, stands satisfied in the case of the petitioner-establishment.

35. A bare glance at the certificate of M/s Ford, Rhodes, Parks and Company, dated 16th July, 2014 indicates that the petitioner had actually earned profits during the years 2009-2010 and 2010-2011, of 35,60,000/- and 7,41,000/- respectively. It was precisely for this reason that the accumulated losses of the petitioner have fallen, from 2,00,14,000/- in 2008-2009, to 1,64,14,000/- in 2009-2010 and 1,56,13,000/- in 2010-2011.

36. The reliance, by the petitioner, on the fact that it was suffering accumulated losses, during the years 2008-2009, 2009-2010 and 2010- 2011, is, in my view, thoroughly misplaced and ex facie contrary to the WP (C) 9497/2015 & WP (C) 10534/2015 Page 25 of 31 terms of the Majithia Wage Board Award. The test, postulated in the Award, to insulate an establishment from the requirement of

paying revised wages, is not one of accumulated losses, but of continuous losses over the three years preceding implementation of the award. Inasmuch as the terms of the Majithia Wage Board Award, have, in toto, received the imprimatur of the Supreme Court, first in ABP Private Ltd1, and thereafter in Avishek Raja8 , it is not open to any authority to revisit the terms of the Award, or adopt, in interpreting the terms thereof, an interpretation which would dilute their effect. The Majithia Wage Board Award was clear and categorical in fixing continuous losses over the three years preceding the implementation of the award as the indicium to determine whether a particular newspaper establishment could be spared the rigour of paying revised wages in terms thereof. It is not open to this Court, or any other executive or judicial Authority in the territory of India, to alter or change these terms. We would do well to remember that Article 144 of the Constitution of India mandates that all authorities civil and judicial, in the territory of India shall act in aid of the Supreme Court.

37. The Majithia Wage Board Award has been lauded by the Supreme Court. Implicit compliance, therewith, has been mandated, by the Supreme Court in Avishek Raja8, as an imperative necessity. Any attempt to escape compliance, with the mandate of the Award, by unjustified resort to the proviso to Clause 21 thereof, in my view, would do complete disservice to the decisions in ABP Private Ltd1 and Avishek Raja8. It is necessary to note that the proviso to Clause 21 of the Majithia Wage Board Award does not refer to cash losses, but to heavy cash losses. WP (C) 9497/2015 & WP (C) 10534/2015 Page 26 of 31 It is obvious that the word heavy is no inadvertent superfluity. The intent of employing the expression is apparent, which is to ensure that the exception is not made the rule. Resort to the proviso to Clause 21 is, therefore, permissible only when the cash losses, suffered over the three years preceding the date of implementation of the Award are heavy. Though the Award does not expressly define the term heavy, or delineate the contours thereof, that does not, in my view, lend any ambiguity to the expression. The expression heavy has to be interpreted contextually and purposively, and keeping in mind the overall tenor of the Award, in the backdrop of its intent and purpose. Thus interpreted, it is apparent that the Majithia Wage Board Award, in prefixing the word losses, with heavy, in the proviso to Clause 21, intended the exception to apply only to cases in which the cumulative and

continuous losses, suffered over the period of 3 years immediately preceding the date of implementation of the Award, were so heavy as to render compliance, with its terms, well nigh an impossibility. Nothing short of this exacting standard, in my view, could permit a newspaper establishment to avoid compliance with the terms of the Award.

38. One may refer, profitably to the following words of Rohinton F. Nariman, J.

which, though they find place in a dissenting opinion in Kantaru Rajeevaru v Indian Young Lawyers Association through its General Secretary11 admirably encapsulates the law in this regard thus : 65. The constitution places a non-negotiable obligation on all authorities to enforce the judgments of this Court. The duty to do so arises because it is necessary to preserve the rule of law. If those whose duty it is to comply were to have a discretion on whether or not to abide by a decision of the court, the rule of law 11 MANU/SC/1565/2019 WP (C) 9497/2015 & WP (C) 10534/2015 Page 27 of 31 would be set at naught. Judicial remedies are provided to stakes holders before a judgement is pronounced and even thereafter. That, indeed, is how the proceedings in review in the present case have been initiated. Hence arguments have been addressed, exchanged between counsel and considered with the sense of objectivity and fairness on which the judicial process rests. These remedies within a rule of law framework provide recourse to all those who may be and are affected by the course of a judicial decision. When the process is complete and decision is pronounced, it is the decision of the Supreme Court and binds everyone. Compliance is not a matter of option. If it were to be so, the authority of the court could be diluted at the option of those who are bound to comply with its verdicts. 39. Echoing the same sentiment, the Supreme Court declared, in Fr. Issac Mattammel Cor-Episcopa v. St. Marys Orthodox Syrian Church12 that the High Court has no right to tinker with the judgment and order passed by this Court which is binding and the judicial propriety has to be maintained at all costs.

40. Article 141 of the Constitution of India makes all decisions of the Supreme Court binding on every executive and judicial authority in the territory of India. The Supreme Court having, not once but twice, emphasised the need to scrupulously

comply with the terms of the Majithia Wage Board Award and pay revised wages in terms thereof, it would not be open to any newspaper establishment to seek to wriggle out of the said requirement by taking shelter behind the cautionary caveat, provided in the award with respect to establishments suffering heavy cash losses. At the cost of repetition, it may be pointed out that it is only where the establishment has suffered continuous cash losses for the years 2008-2009, 2009-2010 and 2010-2011 and the losses are so crippling as 12 MANU/SC/1264/2019 WP (C) 9497/2015 & WP (C) 10534/2015 Page 28 of 31 to make it impossible for the establishment to pay revised wages in terms of the award, that the establishment could seek to avoid the said liability.

41. Para 29 of the report in Avishek Raja8 clearly states that determination of this issue, which essentially involves factual analysis ought to be undertaken by the Competent Authority, and is not to be brought before Courts. The Competent Authority has, in this case, arrived at an opinion that the petitioner was not suffering from heavy cash losses as would make it impossible for the petitioner to pay revised wages, to the members of the Union, in terms of the Majithia Wage Board Award. The certificate, dated 16th July, 2014, issued by M/s Ford, Rhodes, Parks and Company which is also supported by the balance sheets of the petitioner, clearly indicate that the very first test postulated in para 28 of Avishek Raja8 i.e. that the establishment should have suffered continuous losses over the three financial years preceding the implementation of the Majithia Wage Board Award, itself stands unfulfilled in the case of the petitioner, as it has admittedly earned profits during the year 2009-2010 and 2010-2011. In that view of the matter, it cannot be said that the petitioner was continuously in loss over the said three financial years, or that the losses suffered by it were so crippling as to render it impossible for the petitioner to comply with the terms of the award.

42. For these reasons, I am completely in agreement with the finding, of the Competent Authority in the impugned orders, dated 21st July, 2015 and 19th August, 2015, that the petitioner was not entitled to immunity from the requirement of paying revised wages to its workmen in terms of WP (C) 9497/2015 & WP (C) 10534/2015 Page 29 of 31 the Majithia Wage Board Award, on the basis of the proviso to Clause 21 thereof.

43. Inasmuch as the issue in controversy stands concluded by the clarificatory decision of the Supreme Court in Avishek Raja8, I do not deem it necessary to examine the authorities, cited by Mr. Bansal, regarding the principle of capacity to pay. While capacity to pay may generally speaking, be a relevant factor while examining the issue of payment of revised wages by an establishment to its workmen, in view of Clause 21 of the Majithia Wage Board Award, which is specific in terms and which has been accorded the approval of the Supreme Court, as well as the tests laid down in para 28 of Avishek Raja8, no occasion arises for any recourse to generalized principles governing payment of revised wages vis--vis capacity to pay. In fact, the capacity of a newspaper establishment to pay wages, in accordance with the terms of the Majithia Wage Board Award, ought, in view of Clause 21 of the Award to be determined on the basis of whether the establishment has, or has not, suffered heavy cash losses during the years 2008-2009, 2009-2010 and 2010-2011, and not vice versa. Viewed thus, it is clear that the petitioner cannot be treated as incapacitated from the requirement of payment of revised wages as per the Award. Conclusion 44. For the aforesaid reasons, I am of the view that there is no merit in these writ petitions, and that the challenge, by the petitioner, to the impugned Award dated 21st July, 2015 in WP (C) 9497/ 2015 and 19th WP (C) 9497/2015 & WP (C) 10534/2015 Page 30 of 31 August, 2015 in WP (C) 10534/2015 of the Competent Authority is completely bereft of substance.

45. Resultantly, these writ petitions are dismissed.

46. As a consequence, the Respondent No.3 Union would be entitled to payment of the revised wages, in terms of the impugned order dated 21st July, 2015 in WP (C) 9497/2015 and 19th August, 2015 in WP (C) 10534/2015, of the Competent Authority. Certain amounts have been deposited, by the petitioner, in this Court, during the pendency of these proceedings, pursuant to orders passed by this Court and the Supreme Court of India. The said amounts alongwith interest earned thereon, if any, shall be released, forthwith, to Respondent No.3. The balance amount payable to Respondent No.3, in terms of the impugned order dated 21st July, 2015 in WP (C) 9497/2015 and 19th August, 2015 in WP (C) 10534/2015 shall be paid by the petitioner within a period of four weeks from the

date of receipt, by it, of a certified copy of this judgment.

47. All pending applications stand disposed of accordingly.

48. There shall be no order as to costs. NOVEMBER18 2019 dsn C. HARI SHANKAR, J.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com