Union of India Vs. Authority Under the Minimum Wages Act and ors.

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Court : Mumbai

Decided On : Mar-07-1968

Reported in : [1968(17)FLR266]; (1968)IILLJ750Bom

Judge : D.V. Patel and ;S.H. Naik, JJ.

Acts : Minimum Wages Act, 1948 - Sections 2, 3, 5, 5(2), 12, 13, 14, 18, 20 and 20(2)

Appeal No. : Special Civil Application No. 415 of 1965 with Special Civil Application Nos. 501, 571 and 2018 of 1

Appellant : Union of India

Respondent : Authority Under the Minimum Wages Act and ors.

Judgement :

Nain, J.

1. This is a petition under Arts. 226 and 227 of the Constitution of India filed by the Union of India as representing the Central Railway Administration for write of certiorari and prohibition, praying for quashing of two orders made by respondent 1, the authority under the Minimum Wages Act, 1948, for Neral area. The said authority is also the Civil Judge, Junior Division, at Karjat in Kolaba district. Respondents 2 to 201 are alleged to have been employed with the Central

Railway Administration during the period from 1 April, 1952 to 31 December, 1963, on construction and maintenance of railway tracks.

2. The facts leading to the petition briefly stated are that respondents 2 and 201 filed against the petitioners on 24 January, 1964, an application before respondent 1, being Application No. 1 of 1964, for recovery of wages alleged to be due to the said respondents being the difference between the minimum wage fixed by the Central Government under the Minimum Wages Act, 11 of 1948, and the wages alleged to have been paid to them. They also claimed overtime wages alleging that the Minimum Wages Act, 1948, prescribed work for 8 hours a day, whereas they had been made to work for 8(1/2) hours per day. The respondents alleged that their rate of pay as fixed under the Act was Rs. 2.25 per day, whereas they had actually been paid at the rate of Rs. 1.75 per day. They claimed this difference of 50 P. per day each for the period from 1 April, 1952 to 31 December, 1963. For the same period they claimed overtime allowance for half an hour per day. Their total claim aggregated to Rs. 7,05,000. As the period of limitation for making such application is prescribed under S. 20 of the Minimum Wages Act, 1948, and is a period of six months from the time that the wages become due, respondents 2 and 201 realized that their claim for major part of the time would be barred by limitation. Sub-section (2) of S. 20 makes a provision for condonation of delay. Respondents 2 and 201, therefore, made an application for condonation of delay. The grounds that they alleged for the condonation of delay were, firstly, that their employment was on the construction and maintenance of roads and in building operations within the meaning of entry 7 in part I of the schedule to the said Act and this entry had been substituted in place of the original entry by Act 30 of 1957 which came in force in September 1957. They claimed that their right to claim the difference arose in September 1957 and they could not have made the application earlier than that. For explaining the delay for the remaining period up to the date of the application, they stated that they had been carrying on correspondence with the authorities and pressing their claim and the authorities stated that they were considering the claim and, therefore, they could not make an application earlier. Respondent 1 delivered a judgment in the said application on 25 April, 1964 condoning the delay in making the claim for the period from 1 February, 1956. The respondents' application was thereafter numbered as Application No. 7 of 1964

and the petitioners filed a written statement on merits wherein they inter alia contended that the nature of the alleged employment of respondents 2 to 201 did not fall within any one of the entries in part I of the schedule to the Minimum Wages Act, 1948. The petitioners, therefore, contended that respondent 1 had no jurisdiction to entertain the application of the remaining respondents. Respondent 1 thereafter heard submissions made by both the parties and delivered a judgment on 19 January, 1965, holding that respondents 2 to 201 were employed for the purpose of construction or maintenance of reads or for building operations within the meaning of entry 7 in part I of the schedule to the Act. Respondent 1 further held that the word 'road' included a 'railroad' within the meaning of the said entry and that he had jurisdiction to entertain and try the application, and he ordered that the application should proceed on merits. The present petition has been filed for quashing the two orders of respondent 1, one dated 25 April, 1964, condoning delay for the period form 1 February, 1956 and the other dated 19 January, 1965, holding that the construction and maintenance of a road included the construction and maintenance of a railway track and ordering that the application should proceed on merits.

3. The first contention of the petitioners is that the word 'road' in entry 7 in part I of the schedule to the Minimum Wages Act, 1948, does not include a railway track or railway line and, therefore, the construction and maintenance of a railway track does not amount to construction and maintenance of a road within the meaning of that word in the said entry.

4. In order to appreciate this argument, we must go through certain provision of the Minimum Wages Act 11 of 1943. The Act in its preamble states that it is an Act to provide for minimum rates of wages in certain employments. Section 2(b) defined the expression 'appropriate Government' as meaning :

'in relation to any scheduled employment carried on by or under the authority of the Central Government or a railway administration or in relation to a mine, oil-field or major port, or any corporation established by a Central Act, the Central Government.'

5. Sub-section (e) of S. 2 defines 'employer' as meaning a person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under the Act. Sub-section (g) of the said section defines 'schedule employment' as meaning employment specified in the schedule to the Act. Section 3 of the Act provides for fixing of minimum rates of wages and states that the appropriate Government shall in the manner stated in the said section fix minimum rates of wages. Section 5 prescribes procedure for fixing and revising minimum wages. Sub-section (2) of the said section provides that the Government shall by notification in the official gazette fix or revise the minimum rates of wages in respect of each scheduled employment. Section 12 provides for payment of minimum rates of wages and states that where in respect of any scheduled employment a notification under S. 5 is in force, the employer shall pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deductions. Section 13 of the Act fixes the hours for a normal working day and S. 14 provides for payment for overtime and states that where as employee, whose minimum rate of wages is fixed under the Act by the hour, by the day or by such a longer wage period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or part of an hour so worked in excess at the overtime rate fixed under the Act. Section 20 as we have stated hereinabove provides for application in respect of claim arising under the Act and the period within which such applications should be made and gives power to the authority under the Act to condone delay. Part I of the schedule to the Act contains twelve entries. We are here concerned only with entry 7 which provides for 'employment on the construction or maintenance or reads or in building operations.' This entry in the words hereinabove stated was substituted in place of the original entry 7 by S. 18 of Act 30 of 1957 with retrospective effect, namely, with effect from the date the Minimum Wages Act came into force, which is 15 March, 1948. The entry as it originally acted covered 'employment' on the construction of reads but did not cover employment on maintenance of reads. The term 'maintenance' appears to have been introduced in

1957, but instead of merely inserting this word, the legislature decided to substitute the entry in the present form in place of the original entry. Under S. 5(2), the Government of India, Ministry of Labour, had issued a notification No. S.R.O. 593, dated 31 March, 1952, providing that the Central Government fixes minimum rates of wages payable to the classes of employees employed on read construction or in building operation in certain railways which includes the Central Railway. The minimum rates of wages take effect from 31 March, 1952. The schedule to the notification contains three columns. The first pertains to the name of the State. Under this column, instead of setting out the same of the State or any part of the territory constituted in the said State, there are entries pertaining to

(1) Bombay to Thana;

(2) Thana to Igatpuri and Poona;

(3) beyond Poona and

(4) beyond Igatpuri.

6. We are concerned with employees who are working at Karjat which is between Thana and Poona. The second column pertains to categories of employees and divides them in three categories : skilled, semi-skilled and unskilled employees. The third column prescribes all inclusive minimum rates of wages.

7. The principal question, before us, is whether respondents 2 to 201 were in employment on the construction or maintenance of 'roads.' The contention as stated hereinabove of the petitioners is that construction or maintenance of a road as a railway track is not covered by the expression 'construction or maintenance of roads.' Unfortunately the word 'read' is not defined by the Minimum Wages Act. Concise Oxford Dictionary, 5th Edn., defines the word 'read' as 'line' of communication between places for use of foot-passengers, rider and vehicles.' The expression 'road-bed' is described to mean 'foundation structure of a railway.' Now, if a road-bed means the foundation structure of a railway, there is no reason why a railway should not mean a road or a line of communication between places for use of vehicles. The same dictionary gives the meaning of the word 'vehicle' as

'carriage, conveyance of any kind used on land.' A railway engine or wages or compartment would undoubtedly fall within the meaning of the word 'vehicle.' The word 'railroad' has been given the meaning 'railway.' According to the same dictionary, the word 'railway' means 'road laid with rails, track or set of tracks of iron and steel.' Thus, it will appear that the word 'railway' itself means a road laid with rails. This would suggest that road is the genus and railway is a species of read.

8. Oxford English Dictionary, Vol. 8, 1961 Edn., gives the meaning of the word 'road' as an ordinary line of communication used by persons passing between different places, usually one wide enough to admit of the passage of vehicles as well as horses or travelers on foot. Another meaning given to the same word in the same dictionary is 'any way, path or course.' Coming to the word 'railway,' the meaning given is 'a way or read laid with rails on which the wheels of wagons containing heavy goods are made to run for case of transport; also the way composed of rails thus laid.' Under the heading of the word 'railway' the dictionary mentions 'of railroad' which word again it is stated was at one time equally or more common in Great Britain and still usual in America. It would appear from the Oxford English Dictionary that the word 'railroad' was at one time commonly used in Great Britain as synonymous with the word 'railway' and that it is falling into disuse in that country but is still used in America. This would indicate that the words 'railway and railroad' are synonymous. The dictionary also gives an extended meaning of the word 'railway' as the whole organization necessary for conveyance of passengers and goods by such a line or its management. We are, however, not concerned with the extended meaning of the word in this case. It is sufficient to say that the meaning of the word 'road' in both the Concise Oxford Dictionary as well as Oxford English Dictionary clearly indicates that a railway or a railway track is a species of the wider expression 'road.' This would, therefore, appear to be the literal and the dictionary meaning of that word.

9. Stroud in his Judicial Dictionary, Vol. III, 1953 Edn., states under the word 'railway' that the word has no special technical meaning, but is to be understood in its commonly received sense. Stroud also proceeds to discuss how the word 'road' has been defined in various Acts mostly pertaining to public authorities. No labour

statute has been cited and there is no definition of the word 'road' given in a statute which is in pari materia with the Minimum Wages Act.

10. It is an ordinary rule of interpretation of statutes that the words of a statute when there is a doubt about their meaning are to be understood in the sense in which they best harmonize with the subject of the enactment and the object which the legislature has in view. When dealing with particular business or transactions, words are, therefore, presumed to be used with the particular meaning in which they are understood in the particular business is question. If there is no appeal meaning given to a word in that business, the words are used in the popular dictionary sense. The Minimum Wages Act is a part of labour legislation. In absence of any special meaning given to it in any labour legislation which is in pari materia with this Act or by a judicial precedent, the literal meaning is to be preferred to any special meaning that the word may bear in any other enactment which has a different subject of enactment and has a different object to be achieved in view. It would, therefore, appear that the construction or maintenance of roads would include 'construction and maintenance' of railway, railroad or railway tracks.

11. Sri Parikh on behalf of the petitioner had two objections to this ordinary meaning of the word 'road.' One was that rails run on tracks, and not on an untracked road, and the second was that railway tracks were used exclusively by railway enginer, compartments and wagons and were not used by passengers, riders or other vehicles. He, therefore, contended that a railway track would not fall within the definition of the word 'road.' A simple answer to the first objection that railway trains run on tracks is that tram-cars also run on tracks and the road on which the said tracks are laid would nonetheless be a road. Sri Parikh suggested that at the same time, other vehicles, pedestrians and riders would and could use the part of the road occupied by tramway tracks. This would again bring us to his second objection as to the exclusive use of the railway track by railway trains. The answers to this contention of exclusive use are that in same countries like Holland roads are divided into three sections. One part has railway tracks on it, the other part is allotted to cyclists and on the third part (all the three parts run parallel) motor vehicles are permitted to run. Much part of the road is exclusively used by a

different kind of vehicle i.e., railway train, a cycle and an automobile. If Sri Parikh's objection were correct, this road which has got three different vehicles using parts of it exclusively would cease to be a read by his definition. The second example is of speedways in England and America and autobahn in Germany and other parts of Europe. These are roads enclosed by a wire fencing or other fencing and are used exclusively by fact moving vehicles. No pedestrians, riders, animals of other vehicles are allowed to stray into the speedways and autobahns. Apart from such other vehicles, pedestrians and riders not being allowed to go on the speedways, they could be so only at the risk of being crushed under fast-moving vehicles. The question would be whether the speedways and autobahns are or are not roads or do they cease to be roads just because they are used by a particular kind of vehicle, such as a motor vehicle. It would appear to us that there is no substance in the contention that, if a track or a way is otherwise a road, it ceases to be so either because it is exclusively used by a particular kind of vehicle or because a vehicle runs on tracks which are not used by other vehicles. At the best, running of a train on particular tracks may affect the divisibility or maneuverability of the vehicle, but the case of a trolley bus would be the same because the range of maneuverability would be controlled by the length of the rod which connects the vehicle with the overhead transmission lines. It cannot be said that a road used by a trolley bus ceases to be a road just because the vehicle has to operate within a limited range or an a particular track. In our view a footpath, foot-track, bridge path, tramway track, speedway, autobahn and railway track or railroad would all be 'roads' notwithstanding their use or exclusive use by a pedestrian, rider, tramway, fast-moving vehicle or a railway engine, wagon or compartment, as long as such road is used as a line of communication between places.

12. Sri Parikh cited to us S. 3(4) of the Indian Railways Act as defining the word 'railway.' Our attention has also been drawn to S. 7 of the Indian Railways Act in which the words 'roads and railways' are separately mentioned as two things that a railway administration may maintain. Section 51 of the Indian Railways Act also mentions establishment of railways or roadways for traffic, Sri Parikh has also drawn our attention to S. 2(f) of the Road Transport Corporation Act, defining a 'vehicle' as not to include railway. He has also cited the Carriers Act as making a distinction between a carrier and a railway. Now, all these references would not

lead one to the conclusion that a railway would not fall within the meaning of the word 'road.' The word 'road' is not defined in any one of these enactments. Any provision for maintenance of roads and railways would not indicate that the word 'railway' would not be included in the word 'road.' It may be that the legislature has mentioned both the words to remove all doubts. Even if the word 'road' had been defined in the Indian Railways Act, it would not be in pari materia with the Minimum Wages Act. The first would deal with the subject of transport and the second would be a part of labour legislation and it may well be that the word 'road' may have different meanings in two different enactments when the very object to be achieved by the enactments is different.

13. We, therefore, hold that employment on the construction or maintenance of railway tracks or lines would be employment on the construction or maintenance of roads and that employment on the construction or maintenance of railways would fall under entry 7 in part I of the schedule to the Minimum Wages Act.

14. The second contention taken by the petitioners is that the order of respondent 1 dated 25 April, 1964, condoning delay in making application in respect of claim falling due after 1 February, 1956, is an error of law apparent on the face of the record, and ought to be quashed. Before respondent 1, respondents 2 to 201 relied on the fact that entry 7 was substituted in place of the original entry in the Minimum Wages Act in September 1957, so that they could not have made an application at any rate prior to September 1957. They state that they had been carrying on correspondence with the authorities for the payment of the claim which was the subject-matter of this application and that the authority had been telling them that the decision on their representations and letters was a matter of policy which would be decided in due course and that they came to Court only when they realized that they would not get their claim without recourse to law. The petitioners contended that the alleged correspondence related to workman employed under the Inspector of Works of Kurla Tramway Section, whereas respondents 2 to 201 were employed under the permanent way inspector at Neral, that these were two departments and that there was no correspondence between respondents 2 to 201 and the authorities. These are, however, disputed questions of fact which can best be settled in a suit or an application, and not in a petition under Arts. 226 and

227 of the Constitution of India. Respondent 1 authority had undoubtedly jurisdiction to decide these questions in the manner that it has done. The Supreme Court has decided in the case of Lonand Gram Panchayat (by Sarpanch) v. Ramgiri Gosavi and another : (1967)IILLJ870SC that the authority under the Minimum Wages Act has discretion to condone the delay under second proviso to S. 20(2) in presenting the application, provided sufficient cause for the entire delay is shown to its satisfaction. This discretion like other judicial discretion must be exercised with vigilance and circumspection according to justice, commonsense and sound judgment. The words 'sufficient cause' should receive a liberal construction so as to advance substantial justice when no negligence, nor inaction nor want of bona fides is imputable to the applicant. The Supreme Court has further provided that the power of superintendence over tribunals vested in the High Court under Art. 227 of the Constitution is not greater than the power under Art. 226 and is limited to seeing that the tribunal functions within the limits of its authority. The High Court will not review the discretion of the authority judicially exercised, but it may interfere if the exercise of the discretion is capricious or perverse or ultra vires. The High Court may refuse to interfere under Art. 227 unless there is grave miscarriage of justice. The Court cannot interfere merely because it might take a different view of the facts and exercise the discretion differently. Respondent 1 authority has admittedly functioned within the limits of its authority for it has power under the second proviso to S. 20(2) to condone delay. We cannot say that the discretion has been exercised by respondent 1 authority in a manner which is capricious or perverse or ultra vires. We see no reason to interfere with the discretion exercised by respondent 1 authority under the provisions of either Art. 226 or 227 of the Constitution of India. If after the applications are finally decided and the petitioners are ordered to pay any amount to respondents 2 to 201 or any of them, they will be at liberty to agitate the question of limitation and condemnation of delay in any proceedings thereafter that may be available to them.

15. In the above view of the matter, the petition is dismissed with costs. Respondent 1 authority may proceed with Application No. 7 of 1964 on merits. The said application should be heard as early as possible.

16. Rule is discharged with costs in Special Civil Applications Nos. 501, 571 and 2018 of 1965. Miscellaneous Applications Nos. 8 and 12 of 1964 (Special Civil Applications Nos. 501 and 571 of 1965) will also new proceed on merits. If after these two applications are finally decided and the petitioners are ordered to pay any amount to the workman or any of them, the petitioners will be at liberty to agitate the question of limitation and condonation of delay in proceedings thereafter that may be available to them.

17. Miscellaneous Applications Nos. 4 and 21 of 1965 are already disposed of.

18. Miscellaneous Applications Nos. 8 and 12 of 1964 should be heard as early as possible.