

Ajay Bansal Vs. State

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Court : Delhi

Decided On : Jul-06-2007

Reported in : (2008)ILLJ199Del

Judge : A.K. Sikri, J.

Acts : [Minimum Wages Act, 1948](#) - Sections 2, 3, 5, 5(2), 7, 22A, 26(3) and 27; [Delhi Shops and Establishments Act, 1954](#) - Sections 2(5) and 2(30); [Factories Act 1948](#) - Sections 7(1); Code of Criminal Procedure (CrPC) - Sections 200, 203, 204 and 482; Delhi Shops and Establishments (Amendment) Act, 1994

Appeal No. : Crl. M.M. No. 2170/2003

Appellant : Ajay Bansal

Respondent : State

Advocate for Def. : Baldev Malik, Adv.

Advocate for Pet/Ap. : Sanjay Bansal,; Ashu Bhatia and; Deepak Kansal, Advs

Disposition : Petition dismissed

Judgement :

A.K. Sikri, J.

1. The petitioner herein is facing prosecution for violation of Section 22-A of the Minimum Wages Act (in short 'the Act') initiated on the basis of complaint filed by the Minimum Wage Inspector, Office of the Assistant Labour Commissioner, Delhi (hereinafter referred to as 'the Inspector'), alleging that the petitioner is not paying the minimum wages to his employees and he has thereby committed the offence under the aforesaid provisions of the Act. It is alleged in the complaint that the complainant inspected the petrol pump of the petitioner on 22.3.2001 where he found 10 workers employed by the petitioner and further that the petitioner did not show any record or documents which the petitioner is supposed to keep under the provisions of the Act and the rules framed there under.

2. On this complaint the learned MM passed summoning orders dated 3.7.2001 after dispensing with the examination of the complainant under Section 200 of the Cr.P.C. The petitioner appeared but filed the application under Section 203/204 of the Cr.P.C. praying for dropping of the proceedings against him and dismissal of the complaint on the ground that the establishment of the petitioner was not covered by the provisions of the Act and therefore, the Inspector had no power/authority under the law to summon the record or file of the complainant and prosecute the petitioner. This application was dismissed by the learned MM vide his order dated 19.10.2002. Feeling aggrieved, present petition is filed under Section 482 of the Cr.P.C.

3. The petitioner does not dispute that he is the proprietor of the petrol pump which he runs under the trading name ' M/s. Image Filling Station '. His entire case is that the establishment, namely, the petrol pump is not covered by the provisions of the Act and, therefore, the provisions of the said Act are not applicable to a petrol pump, not being a 'scheduled employment' under the said Act since there is no notification adding to the schedule to the Minimum Wages Act, a petrol pump.

4. To put it more clearly and in nutshell, argument of the petitioner is that ' scheduled employment ' is defined under Section 2(g) of the Act to mean an employment specified in the schedule. In so far as a petrol pump is concerned, it is not included in either Part I or Part II of the Schedule so prepared under Section 2(g) of the Act. No doubt, Section 27 empowers the State Government to add to

the schedule by issuing necessary notification. But till date, no such notification has been issued by the State Government in exercise of powers conferred upon it under the aforesaid provision.

5. In the application filed by the petitioner before the learned MM seeking dismissal of the complaint, same plea was taken. Reply was filed by the Inspector to this application contesting the application on the ground that all the establishments, which are covered under the Delhi Shops and Establishments Act, are covered under the scheduled employment under the Minimum Wages Act in view of notification dated 9.3.2000. Perusal of the impugned order dated 19.10.2002 passed by the learned MM would reveal that he took into consideration the definition of wages under Section 2(30) of the Delhi Shops and Establishments Act and Section 2(h) of the Minimum Wages Act as per which, the definitions of wages under both the enactments are identical. In fact, Section 2(30) of the Delhi Shops and Establishments Act states that 'wages' means wages as defined under Section 2 of the Minimum Wages Act. thereforee, the wages as defined under the Minimum Wages Act would apply to the workers employed in the establishment covered under the Delhi Shops and Establishments Act. This coupled with notification No. F.12(22)/92/MW/Lab. dated 15.2.1994 makes it clear that all shops and establishments covered by the Delhi Shops and Establishments Act, 1994 are included in the scheduled employment. It would be appropriate to reproduce the relevant portion of the discussion contained in the order of the learned MM on this aspect which reproduces the aforesaid notification dated 15.2.1994 as well:

From the definition of 'wages' as given in the Shops and Establishments Act r/w definition of 'wages' as given in the M.W. Act clearly means that it is the 'wages' as defined under the M.W. Act which would apply to the workers employed in the establishments covered under the Shops and Establishments Act. Besides, there are 29 'scheduled employments' as detailed in the latest notification No.F.12(22)/92/MW/Lab. Dated 15.2.94. The body of the notification reads as under:

In exercise of the powers conferred by Sub-section (2) of Section 5 of the [Minimum Wages Act, 1948](#) read with the Government of India, late Ministry of States Notification No. 104-J, dated 24th August, 1950 and Ministry of Home Affairs Notification No.S.O.530 (F.2/9/66-UTL), dated 6th February, 1967 and all other powers enabling him in this behalf, the Lt. Governor of the NCT of Delhi, after considering the representation received in respect of the proposals published vide this Administration's Notification No.F.12(142)/92-MW/Lab; dated 16th April, 1993 and consulting the Minimum Wages Advisory Board constituted under Section 7 of the said Act, is pleased to revise, as per Schedule below, the minimum rates pf wages already fixed vide this Administration's Notification of F.12(22)/88-MW/Lab. Dated 28th April, 1989 in the Scheduled employment in ' All Shops and Establishments ' covered by the Delhi Shops and Establishment Act, 1954 in the National Territory of Delhi. This Notification shall come into force with effect from 15-2-1994 from which date this Administration's Notification No.F.12/(22)/98-MW/Lab dated 28th April, 1989 shall cease to have effect. The scheduled employment for automobile engineering including service and repair work of automobile has also been scheduled under the aforesaid notification. Item 12 of the ' semi skilled ' workers, finds mention in the aforesaid schedule. Item 12 is in relation to the ' petrol pump attendant '. Besides, automobile service station, depots and petrol pump for the retail sale of petrol are covered in schedule I under the Shops and Establishments Act and in terms of definition of ' wages ' under the Shops and Establishments Act r/w definition of the ' wages ' under the M.W. Act petrol pump would be covered by the definition of ' wages ' under the M.W. Act.

6. Submission of the learned Counsel for the petitioner is that even as per the complaint filed by the complainant, it is the scheduled employment which is covered by the provisions of the Minimum Wages Act. Reliance upon Notification dated 15.2.1994 was misplaced as that Notification was issued under Sub-section (2) of Section 5 of the Minimum Wages Act for revision of the minimum wages and could not apply as the appropriate provision for inclusion of any establishment under the scheduled employment was Section 27 of the Act and there was no Notification issued under the provisions of this Act bringing within the ambit of the said Act, petrol pumps as well. In support ;of this contention he referred to the judgment of the Supreme Court in the case of Madhya Pradesh Mineral Industry

Association v. The Regional Labour Commissioner, Jabalpur and Ors. : (1960)IILLJ254SC .

7. Before appreciating the contention of the petitioner, it would be necessary to refer to the scheme of Minimum Wages Act. Section 2(e) of the Act defines 'employer' and reads as under:

(e) 'employer' means any 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 this Act and includes except in Sub-section (3) of Section 26

(i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act any person named under Clause (f) of Sub-section (1) of Section 7 of the [Factories Act 1948](#) (63 of 1948) as manager of the factory;

(ii) in any scheduled employment under the control of any government in India in respect of which minimum rates of wages have been fixed under this Act the person or authority appointed by such government for the supervision and control of employees or where no person or authority is so appointed the head of the department;

(iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act the persons appointed by such authority for the supervision and control of employees or where no person is so appointed the chief executive officer of the local authority;

(iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act any person responsible to the owner for the supervision and control of the employees or for the payment of wages;

8. As per the aforesaid provision, 'employer' is the one who employs one or more employees in any 'scheduled employment' in respect of which minimum

rates of wages have been fixed under the Act. 'Scheduled employment' is defined in Section 2(g) of the Act and is to the following effect:

2(g) ' scheduled employment ' means an employment specified in the schedule, or any process or branch of work forming part of such employment;

9. The nature of employments, which are, thus, covered under the Act are mentioned in the Schedule of the Act. The Schedule is in two parts, both of which enlist number of employments. Petrol pump is not mentioned in the categories listed in those parts to the Schedule. Section 27 of the Act gives power to the State Government to add to the Schedule. It would be appropriate to scan through this provision as well. Section 27 reads as under:

Section 27. Power to the State Govt. to add to scheduleThe appropriate Government, after giving notification in the Official Gazette not less than three month's notice of its intention so to do, may, by like notification, add to either part of Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act, and thereupon the schedule shall in its application to the state, be deemed to be amended accordingly.

10. In respect of 'scheduled employments' the appropriate Government is given power to fix the minimum rates of wages for which notification can be issued under Section 3 of the Act. This Section, inter alia, provides that the appropriate Government shall fix the minimum rates of wages payable to employees employed in the employment specified in Part I and Part II of the Schedule and in an employment added to either Part by notification under Section 27. Thus, minimum wages can be fixed in relation to those employments which are prescribed in the Schedule, including those which are added by issuing Notification under Section 27 of the Act.

11. Procedure for fixing such minimum rates of wages is prescribed in Section 5 of the Act as per which, the appropriate Government appoints committees to go into the exercise and after considering the advice of the committee (s), notification is to be issued for fixing the minimum wage. Such a minimum wage can be fixed for the first time under the Act or notification can be issued for revising minimum rates of

wages so fixed.

12. As already pointed above, petrol pump is not included in Part I or Part II of the Schedule. The question which, thus, arises for consideration is as to what is the effect of covering all the establishments covered under the Shops and Establishments Act by mentioning that they would be covered within the meaning of Section 2(g) of the Act as well. This was precisely the question which came up for consideration before this Court in *Delhi Council for Child Welfare v. Union of India*-CW No. 3654/1999 decided on 3.1.2003. In that case, application was filed before the 'Authority' under the Minimum Wages Act by some of the employees/workers appointed by the petitioner-DCCW for payment of minimum wages to them. The objection of the DCCW was that it was not a 'schedule employment' mentioned in Part I and Part II of the Act and there was no notification issued under Section 27 of the said Act, including the said establishment. However, there was no dispute that DCCW was an 'establishment' covered under the Shops and Establishments Act. Thus, the argument was identical as raised in this petition. The argument was negated in the following discussion contained in the said judgment and answers every argument of the learned Counsel for the petitioner raised in this petition. I, therefore, quote from the said judgment extensively:

The aforesaid submissions appear to be attractive in the first blush but a little deeper scrutiny thereof would expose the hollowness of these arguments. No doubt one of the two conditions as mentioned by learned Counsel for the petitioner is to be satisfied for making the provisions of Act applicable to any establishment. The learned Counsel admits that if there is scheduled employment within the meaning of Section 2(g) of the Act then the petitioner Council shall be covered by the provisions of the Act. For this purpose there can be a notification directly covering a particular establishment. However, the purpose can be achieved by the other mode as well, namely., by issuing notification prescribing that all establishments which would be shops or other establishments covered by the Shops Act would also be covered within Section 2(g) of the Act as scheduled employment. thereforee, if petitioner's establishment is shop or establishment under the said Act, it would be scheduled employment within the meaning of

Section 2(g) of the Act.

The learned Counsel for the petitioner submitted that the notification dated 15.2.1994 referred to in the impugned judgment was not reproduced in the impugned judgment and it was totally different from what was observed by the competent Authority. According to learned Counsel this notification clearly provides that it is only a revision of rates of wages already fixed vide earlier Notification dated 28.4.1989 and it in no way declares that all scheduled employments in all shops, in all establishments covered by the Shops Act shall be covered by Section 2(g) of the Act as scheduled employment. Thus according to the counsel the aforesaid Notification dated 15.2.1994 was totally irrelevant and immaterial for deciding the controversy.

No doubt as per Notification dated 15.2.1994 the appropriate Government has revised minimum rates of wages which were fixed w.e.f. 15.2.1994 which were earlier fixed vide Notification dated 28.4.1989. The said Notification very clearly states that this revision is in respect of ``in the scheduled employment in all shops and establishments covered by Delhi Shops and Establishment Act,1954 in the National Capital Territory of Delhi``. This Notification also states as ``employment in all shops and other establishments covered by Delhi Shops and Establishment Act,1954'. Thus all those establishments which are shops or other establishments covered by Shops Act are to pay minimum wages.

Therefore, we fall back on the issue as to whether petitioner Council is shop or establishment under the Shops Act. It is precisely this issue which is determined by the learned Competent Authority. thereforee, the petitioner is not right when it contends that the competent Authority wrongly relied upon Notification dated 15.2.1994. The Competent Authority rightly addressed the question from this angle.

In any case to set the controversy at rest, learned Counsel for the respondent produced Notification dated 13.8.1965 issued by the Government of India in exercise of its powers conferred by Section 27 of the Minimum Wages Act whereby following amendment was made in the Schedule appended to the said Act:

AMENDMENT

In Part I of the said Schedule, after item 14 the following new item shall be added, namely:

15. Employment in all shops and other establishments, covered by the Delhi Shops and Establishments Act, 1954.

Thus it was by the aforesaid amendment in the Schedule that employment in all shops and other establishments covered by Delhi Shops and Establishments Act, 1954 was also included. As per this amendment, all the employees in the employment of shops and other establishment covered by [Delhi Shops and Establishments Act, 1954](#) also became entitled to the minimum wages as fixed under the Minimum Wages Act. By Notification dated 15.2.1994 these minimum wages were further revised.

13. The aforesaid decision was challenged before the Division Bench by filing LPA No. 657/2004 The Division Bench also dismissed the appeal vide judgment dated 28.8.2006 and affirmed the aforesaid judgment, which is reported as Delhi Council For Child Welfare v. Sheela Devi and Anr. : 132(2006)DLT696 . It would be useful to refer to the discussion in the said Division Bench judgment as well on this aspect:

11. At the outset it may be noticed that the appellant does not deny that the two workers, Smt. Ramesh Kumari and Smt. Sheela Devi, are employed with the appellant as Balsevikas. The ground now urged is that the appellant is not employer and they are not employees within the meaning of Minimum Wages Act only because the activity of child welfare is not listed as a scheduled employment under the Minimum Wages Act. It is contended that there is no notification issued under Section 27 of the Act by the appropriate Government to include the activities of the appellant in the Schedule to the Act. therefore, the activities of the appellant cannot be characterised as a Scheduled Employment. Consequently it is contended that the Act can have no application and therefore, the appellant is not required to pay minimum wages to its employees.

12. In the first place it must be noticed that these argument that the activities of the appellant does not constitute a Scheduled Employment is clearly unacceptable in view of a notification dated 13.8.1965 issued by Government of India under Section 27 of the Minimum Wages Act. By the said notification an amendment was made to the Schedule to the Act and Item 15 was introduced. The said amendment reads as under:

AMENDMENT

In Part I of the said Schedule, after item 14 the following new item shall be added, namely:

15. Employment in all shops and other establishments, covered by the [Delhi Shops and Establishments Act, 1954](#). That this notification was not disputed by the appellant either before the learned Single Judge or in the appeal or written submissions before us. thereforee both the competent authority and the learned Single Judge rightly proceeded to examine whether the appellant was an establishment covered by the Shops Act. If indeed it was, then it would undoubtedly be covered by the Minimum Wages Act by virtue of the above amendment.

14. The Division Bench thereafter examined the issue as to whether DCCW was commercial establishment within the meaning of Section 2(5) of the Shops and Establishments Act and answered the same in the affirmative. It is not even necessary to go into that question in the present case as it cannot even be disputed that the establishment of a petrol pump would be a commercial establishment.

15. I, thereforee, find no infirmity in the impugned order passed by the learned MM. The petition is devoid of any merits and is accordingly dismissed.