

Abdul Basheer Vs. State of Kerala

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Court : Kerala

Decided On : Oct-12-2004

Reported in : 2004(3)KLT570; (2005)ILLJ499Ker

Judge : M. Ramachandran, J.

Acts : [Minimum Wages Act, 1948](#) - Sections 5

Appeal No. : O.P. No. 14673 of 2003 etc.

Appellant : Abdul Basheer

Respondent : State of Kerala

Advocate for Def. : M. Ajay, Government Pleader

Advocate for Pet/Ap. : P.K. Ravisankar and; K.P. Dandapani, Adv.

Disposition : Petition dismissed

Judgement :

M. Ramachandran, J.

1. Excepting O.P.No. 14673 of 2003 and W.P.C. No. 24105 of 2004, rest of the cases had been jointly heard and taken up for judgment. The learned Government Pleader had submitted that the said two connected cases also may be listed, which could be jointly disposed of in the nature of the contentions that had been

raised in them.

2. When these cases were listed, learned counsel for the petitioner in O.P.No. 14673 of 2003 and W.P.(C) No. 24105 of 2004 had submitted that they adopt the arguments which had been made in the batch cases. Hence all of them are being disposed of by a common judgment.

3. Earliest of the cases filed was O.P.No. 14673 of 2003. The petitioner in the said case had been allotted the work of 'working down timber and firewood' in a Teak Plantation in Nilambur Division under the Forest Department, during August, 2002 as evidenced by Exts.P1 to P4. He claims that strictly in compliance with the ruling directions, he had finished the work Within the stipulated period. At the time when he was entrusted with the job, the work orders indicated the rates and the estimate of work cost in respect of the work, as per Ext.P1, which was Rs. 16,93,000/-. In respect of the work covered by Ext.P2, the estimate was Rs. 13,63,500/-. The respective estimated amount of work orders in respect of Exts.P3 and P4 were Rs. 12,03,000/- and Rs. 7,54,000/-. The case put forward was that before the work commenced, by virtue of Government Order dated 21.5.2002, the minimum wages payable to the workers employed in the Forest Department in the State stood revised. He had been informed by Exts.P6 to P9 that the estimated amounts had been revised. Thereby the respective amounts of estimates were shown as Rs. 15,81,000/-; Rs. 21,63,500/-; Rs. 20,87,500/- and Rs. 10,74,000/-. These communications issued by the Forest Range Officer, Nilambur Range (4th respondent) are dated 20.9.2002. The petitioner submits that on the basis of the above, he had been paying 'his workers' strictly in accordance with Ext.P5 Government Order and the payments were made in the presence of the 4th respondent. But, he was advised by the 4th respondent, by Exts.P10 to P13 in December 2002, that according to the instructions he had received, the revised rates could not be granted. Requests made by the petitioner did not bear fruits and he contends that normal payments due and payable to him stand withheld. The Original Petition is accordingly filed for getting his claims upheld. The petitioner's claims could be summarised, as found in Ground-D, as following:

'In Ext.P6, a sum of Rs. 15,81,000/- has been sanctioned against which only a sum of Rs. 10,00,000/-has been sanctioned in Ext.P10. Similarly, in Ext.P7, a sum of Rs. 21,63,500/-has been sanctioned against which in Ext.P11 only Rs. 11,19,000/- has been sanctioned. In Ext.P8, Rs. 20,87,500/-has been sanctioned, whereas in Ext.P12 only Rs. 9,30,000/- has been sanctioned. In Ext.P9, Rs. 20,74,000/- has been sanctioned, whereas in Ext.P 13, only Rs. 5,98,000/- has been sanctioned. Thus, as against the total amount of Rs. 79,06,000/- only Rs. 36,47,000/- has been sanctioned. The said action of the respondents is totally arbitrary and illegal'.

Exts.P10 to P13 are the communications issued by the fourth respondent, informing the petitioner, of the instructions received by him that the revised rates were not to be given to him for the work.

4. The claim, therefore, is that the balance amount of Rs. 42,59,000/- is to be directed to be paid to him. Apart from the facts, the legal contention is that when the competent authority, namely the Government, had notified the rates payable by Ext.P5, the Chief Conservator of Forests or even the Government themselves had no jurisdiction for prescribing that such revisions are to be kept in abeyance and thereby reject payments. As a justification for the claim, it is stated that in the auction which followed, the timber collected through the help of the petitioner and others, had fetched a price of almost 8 crores of rupees and therefore the payments should not be delayed.

5. Persons, who are similarly situated like the petitioner, as Conveners who arranged and supervised the. work in the self same Division are the petitioners in the other Writ Petitions. They agitate more or less the same contentions. Sri. V.U. Abdul Basheer, petitioner in W.P.(C) No. 24105 of 2004, however, has filed the said Writ Petition challenging Ext.P5 order of the Government, as well. There the Government observed that the orders revising the minimum wages by notification dated 21.5.2002 and published on 5.6.2002 suffered from discrepancies and therefore it was being kept in abeyance from the date of Order, viz., 21.5.2002. Of course by amending the Writ Petitions, excepting O.P.No. 14673 of 2003, the rest of the petitioners also attack the above said order. According to them, this

interferes with their settled rights, and the Government had no jurisdiction to issue such proceedings. Thus, the claim put up is that the petitioners are entitled to substantial amounts from the respondents, for the work done on due authority, and therefore, the payments withheld are to be declared as illegal.

6. I will refer to materials produced by the petitioner in O.P.No. 14673 of 2003 as also W.P.(C) No. 22880 of 2003, as these two, in between them, covered the full pleadings of the parties.

7. Respondents are the State of Kerala, represented by Secretary to Government, Labour & Rehabilitation Department; the Chief Conservator of Forests; the Divisional Forest Officer, Nilambur North Division and the Forest Range Officer, Nilambur Range. As requested for by the respondents, the Secretary to Government, Forest and Wildlife Department had been impleaded as an additional respondent. Evidently, there appears to have been some amount of confusion in the minds of the respondents as to how to present the facts and adopt the defence in a convincing manner. Perhaps, this was taking notice of the magnitude of the claims, the pedestrian manner in which arrangements were existing and the repercussions which might have been there, in case such claims were found as acceptable by ultimate adjudication of this Court. A cost conscious, effective management system appears to be the need of the hour.

8. The third respondent had filed a counter affidavit in the cases on 26.5.2003. Certain contentions had been raised in answer to the claims. A defensive approach is adopted by the Divisional Forest Officer pointing out that on completion of the works payments had been made as per the estimate, but the higher rate of payments could not be made because of the directives from the higher officers. It is stated that payments at higher rates, might have been made at the risk of the petitioners themselves, but that is not a reason for grant of reliefs in an Original Petition. The facts presented are insufficient to lead anyone anywhere, worthwhile.

9. A petition supported by an affidavit had been thereafter filed on 4.7.2003. The respondent thereby had requested leave to withdraw the earlier affidavit filed and accept a new counter affidavit. Sri. P.P. Cheriankunju, Divisional Forest Officer,

Nilambur North Division had sworn to the earlier affidavit and the later affidavit had been sworn to by Sri. Rajan Sehgal, the Divisional Forest Officer, who came to occupy the post by that time. The said officer pointed out that the claims as agitated by the petitioners had no factual basis. Additional facts had been presented. The petitioners (in all cases) had been nominated as Conveners by the Forest Range Officers in accordance with the procedure prescribed by a Government Order. They were the leaders among the gang of labourers, both for mobilizing labourers and organisation of work. They were not to be equated to profit seeking contractors. The counter affidavit further adverted to the Government Order, which governed the procedure, dated 21.12.1989. It is produced as Ext.R3(a). The system envisaged payment of amounts sanctioned by the competent authority for the work. The amounts were payable to the conveners as per the rates allowed. It had already been paid and therefore there was no justification for a claim that further amounts remained unpaid. It is stated that as per Ext.R3(a), and in practice as well, the petitioners, who have approached this Court, were labourers themselves, though labelled as Conveners who were to make sufficient workers available for the work. A Convener could have only disbursed the amounts received from the department and was not expected to invest in the work.

10. It is averred that the 4th respondent had exceeded in his powers, by addressing them letters, showing his inability to meet the claims put up. The impression created was that the amounts were payable, but he is prevented by Government and higher officials from paying the enhanced rate, The officer points out that the Government had issued an order on 21.5.2002 revising the minimum wages, but that was not implemented finding obvious mistakes. He refers to the averments in the Original Petition as a 'cooked up story developed around a few documents, all originating or culminating at the level of office of Forest Range Officer, Nilambur (Respondent 4) only.' It is further stated that 'effort is to seek additional money from the Government for personal aggrandizement by the convener'. Therefore, it is submitted that the claims do not merit consideration and the Original Petition is misconceived, and an abuse of the process of Court.

11. However, later on a third counter affidavit had been filed on behalf of the Government, by the Principal Secretary to Government, who had been additionally impleaded. It is claimed that the counter affidavit is being filed after extensive discussions at the highest levels of Government and is intended to restate the position of the Government. As there has been some ambiguity and vagueness in the earlier counter affidavits, this affidavit is requested to be considered as the final submission on behalf of the Government in supersession of any contrary submission in any other counter affidavits.

12. The above counter affidavit, filed in W.P.(C) No. 22880 of 2003 had been adopted in the other Writ Petitions as well. Reference is made to the Government Order dated 21.12.1939 (Ext.R3(a) in O.P. No. 14673 of 2003 and Ext.P1 in other cases). The pattern of work of empanelment of conveners has been for the first time introduced thereby. Changing the existing practice, the orders issued in 1989 stipulated that applications were to be invited from among the workers for empanelling them as conveners from the panels maintained by the Divisional Forest Officers. They are awarded work on a rotation basis. The convenor is to decide the number of workers for executing the work, for which an estimate is prepared by the Department. More importantly, it is stated that the department had adopted a piece rate system for carrying out forestry work, as authorised by G.O.(MS). No. 115/77/AD dated 28.3.1977, a copy of which is produced as Ext.R8(a). It is stated that when minimum wages have been fixed only for certain category of work, but the employer is free to contract with the worker and fix wages in respect of other items. Deriving sustenance from the above, it is stated in the counter affidavit that when a convenor accepts a particular work, he agrees to do the work involved for the amount sanctioned on the 'piece rate' system. His ability to earn money along with his co-workers is dependant upon their ability to complete the said operations with the least possible man-hours. Such work automatically excludes time rate wages. It is averred that the petitioners concerned herein had carried out the work as per the schedule and it was therefore immaterial whether or not the minimum wages were revised or such revision had not been brought into force. Argument is that there is no claim urged that the minimum wages applicable for piece rate work had not been paid to them. It was a case where work was carried out, which did not fall under any category,

as notified by the Government, for payment of minimum wages, and basically the claims had no sustainability. However, it is submitted that the Government had power to issue orders in the nature of G.O.(Rt.) No. 314/04/LBR dated 29.1.2004, (subjected to specific challenge in W.P.(C) No. 24105 of 2004). Therefore, according to Government, the claims were misconceived. A claim for minimum wages was not there, and possibly such a claim could have been considered only by a notified authority, and also in appropriate proceedings.

13. Learned counsel for the petitioners however reiterated that it was a case where the work had been allotted, which was specific and earmarked. The work was got done by the authorised convener within the time limit. It was a case where schedules had been prepared bearing in mind the minimum wages payable under law. Therefore, when the date of work, the minimum wages stood increased by a notification under the Minimum Wages Act and when the schedule had received a revision, it automatically followed that payments which constitute the difference also have to follow. The convener had a duty for payment of minimum wages as per the basic Government orders, and coming to know of the notification, employees engaged for the work had been given enhanced benefits in anticipation of receiving payment from the Government. Therefore, there was no justification for respondents to take a stand that the petitioners have to suffer the loss. Counsel submits that when minimum wages are notified following the procedure prescribed by the Act and Rules, the Government had no powers to order that such notification was to be kept in abeyance, for any reason whatsoever. It is therefore submitted that the objection raised by the respondents had no legal basis and the Original Petition/Writ Petitions deserve to be allowed.

14. Sri. Ajay, learned Government Pleader appearing for the respondents, however submits that the stand of the Government had been well explained in the affidavits, filed from time to time. The claim is basically misconceived and when the convenor was one of the workmen, who had also an added duty to muster others, he did not get the status of a contractor, or authorised to forward a claim on principles of escalation. According to him, the magnitude of the claim itself is an index to its unsustainable nature. Figures had been given only in one petition (O.P.No. 14673 of 2003) and the claim is for a sum of Rs. 42,59,000/-. It was too

ambitious and per se artificial. The convener was a workman like any other person and it was unbelievable that apart from the authorised payments by Exts.P1 to P4 of Rs. 36,47,000/- which of course have been already paid over by the Government, he had, himself paid an additional amount of Rs. 42,59,000/- to the workmen engaged for three months period. He had no authority for such payments. It would have been within the rights of the Department, for statistical purposes, to work out figures as estimates, on revised rates of wages, but that did not give a corresponding cause of action for the petitioners to claim such amount, as one which they became entitled to. We may examine the sustainability of the rival stands now.

15. Even though the petitioners submit that the claim is disarmingly simple and straight forward, it does not appear to be so. As conveners, they were expected to mobilize the workmen and get the work done, allotted within the targeted time and for a fixed price. There is no case that amounts notified have not been paid. The question is as to whether such a circumstance can be a spring board for them to automatically claim a revision. Is it necessary that a notional calculation has to be made on a revised estimate?

16. Petitioners also have to meet the argument of the learned Government Pleader that it was not a case of time rated work. Minimum wages could be paid on the basis of piece rates or time rates and only some of the categories of work have been brought within the purview of the notification. In respect of other works, it would have been possible for the Department to prescribe their terms. This is not a case where workmen had put up claims for payment of minimum wages arrears before the notified authority complaining that work had been extracted from them and prescribed wages are yet to be paid. In fact, the denial or delay in respect of claim for minimum wages could have been placed only before a notified authority. Mr. Ajay contends that the Writ Petitions to this extent are misconceived.

17. Perhaps the position will be that much home work had not been there at the hands of the Government when they issued G.O.(MS) No. 118/89/FOR dated 21.12 .1989. Possible areas of disputes have not been adequately foreseen and there has not been any efficient steps to see that Government's interests are

safeguarded, when experimentally it was evolved. The petitioners are apparently relying on a provision, namely paragraph 37 of the order, which prescribes that the convener has a duty to see that the workmen engaged get minimum rate of wages prescribed. However, paragraph 40 of the order shows that the order did not interfere with the right of the Government for carrying out the work on a piece rate basis. The order also shows that a rethinking could have been possible, if there was any difficulty in the workability of the system brought in force. Even though the convener is a workman, preparation of schedule and handing over of the work and the discretion available to the convener to get the work executed, make the arrangements clumsy, as it has some of the trappings of a contract arrangement, but it is specifically prescribed, nevertheless that the engagement of workmen under a supervisor, alone is envisaged. A better manner of control over the activities would have been in the interest of all concerned.

18. But, the above does not in any manner advance the case of the conveners, who are the petitioners herein. We may accept that the estimates have been revised by the respondents. But, that by itself is insufficient to claim the difference by these proceedings at least. The preparation of estimates, the items claimed and the expenditure estimate has not been authenticated or scrutinised even. Some of the items of work, even in the original work order is absolute guess work. (See item 8 in Ext.P1 (O.P.No. 14673/2003), gully plugging 'wherever found necessary' has carried a payment of Rs. 5,29,067/-. It is stated that data is attached. The revised estimate is Ext.P6. Such an entry is not there at all. Discrepancies are writ large, but they do not form part of enquiry in these petitions.) In respect of a work if less than minimum wages were paid, and the workman raises a claim, the veracity of the same could be examined by the notified authority. That is not the case here. I am certain that the learned Government Pleader was justified when he submitted that claims are dishonest in nature. They have no legal or factual basis. The revision of minimum wages, for the said reason alone, has not given any cause of action to the petitioners to claim the imaginary benefits by way of Writ Petition.

19. We may also advert to the challenge against Ext.R8(c) in W.P.(C) No. 22880 of 2003, which is Ext.P5 in W.P.(C) No. 24105 of 2004. The contention of the learned counsel for the petitioner is that this had been done without authority.

Earlier by G.O(Rt) No. 1265/2002/LBR dated 21.5.2002, the minimum rate of wages for the work in the Forest Department had been revised. However, by the impugned order, the Government has kept the orders in abeyance. According to the learned counsel for the petitioners, this was illegal and beyond the powers of the Government and the notification could not have been kept in abeyance by any reserved powers of the Government.

20. The argument appears to be sustainable, Section 5 of the Minimum Wages Act, prescribes procedure for fixing and revising the minimum wages. After considering the advice of the sub-committees, or committees appointed or after considering the representations, the Government is to publish a notification in the official gazette filing/revising the minimum rates of wages in respect of scheduled employments. The statutory prescription is specific that unless such notification otherwise provides it shall come into force on the expiry of three months from the date of its issue. Therefore, when a notification has come as SRO No. 454/2002, revising the minimum wages and , it has fixed the date of publication as the date from which the revised rate of wages are to come into force, from that point of time, the Government has lost the powers to tamper with it, in any manner whatsoever. There is no case that the notification has not been published as is required in the Government Gazette. Result is that Ext.P5 has no legal effect. The notification was in force from the date of its publication.

21. However, this position will not enure to the benefit of the petitioners, as what they are claiming are not arrears of minimum wages. Since the remuneration that was receivable by them was on a comprehensive package, it would not have automatically changed, because of the change in the method of preparation of estimates. That the schedule had been got prepared taking notice of the minimum wages payable at the relevant time does not by itself give any cause of action for the petitioners to claim that a revision was a natural corollary.

22. The Original Petition/Writ Petitions are dismissed. But I hold that Ext.P5 in W.P.(C) No. 24105 of 2004 is not legally sustainable and the notification revising the minimum wages could not have been affected by the above proceedings. The parties are to suffer their costs.

