

V.GOPALA GOWDA, CJ & B.N.MAHAPATRA, J.

W.P.(C) NO. 23867 OF 2011 (Dt. 29.02.2012)

**M/S. GENERAL SECURITY &
INFORMATION SERVICES (P) LTD.**

..... Petitioner.

.Vrs.

**CHIEF ROLLING STOCK ENGINEER
OF EAST COAST RAILWAY
ADMINISTRATION, B B S R &
THREE ORS.**

.....Opp.Parties.

MINIMUM WAGES ACT, 1948 (ACT NO.11 OF 1948) – S.20.

For Petitioner - Mr. Prasanta Ku.Mishra-1, P.Mishra & A.K.Sahoo

For Opp.Parties - M/s. A.K.Mishra, H.M.Das, A.K.Sahoo
(for O.P.No.1 & 2)
Mr. Sidharth Sankar Mohapatra
(for O.P.3 & 4)

V.GOPALA GOWDA, C.J. This writ petition has been filed by the petitioner, which has entered into a contract with opposite party-Railway to render services of cleaning of Railway coaches at Bhubaneswar Coaching Depot and depot premises by adopting mechanized method as per the agreement dated 10.5.2007. The period of contract is for five years from 20.3.2007 to 19.3.2012. As per the contract between the petitioner and the opposite party-Railway, the petitioner is required to clean approximately 93 coaches per day at Bhubaneswar Coaching Depot and Depot premises through advanced machinery with the help of its workers. Prior to the work undertaken by the petitioner, similar work was done by the petitioner by engaging workers at the supervision of the personnel of the opposite party no.1. The rate of wages payable to the employees is stipulated Clause-90 of the Agreement wherein it is stated that the Contractor shall be responsible to ensure compliance with the provision of the Minimum Wages Act, 1948 and the Rules made there under in respect of any employee directly or through petty Contractors or Sub-Contractors employed by him.

2. The petitioner is before this Court questioning the correctness of the order dated 29.4.2010 passed by the Regional Labour Commissioner(Central), Bhubaneswar who is the authority under the Minimum Wages Act, 1948, wherein the petitioner was directed to pay minimum wages for 122 workers for the period from 7.8.2008 to 31.10.2008 amounting to Rs. 5,60,600.52 and overtime wages for the period from 1.10.2008 to 31.10.2008 amounting Rs.31,000/-, in total Rs.5,91,600.52 and towards compensation three times of the claimed amount i.e. Rs. 16,81,801.56 and Rs.1,220.00. The petitioner has been directed to deposit a total sum of Rs.22,74,623.00 towards the claim and compensation. The correctness of the same is questioned by the petitioner in this writ petition urging various grounds.

3. The first ground urged is that the claim petition is not maintainable in view of the limitation of six months as stipulated under Section 20 of the Minimum Wages Act, 1948 as the claim is preferred by the Labor Enforcement Officer (Central), Bhubaneswar-II on behalf of the concerned workers who are working under the petitioner. Therefore, the application for minimum wages filed beyond the period of limitation without there being an application seeking for condonation of delay as provided under the proviso to sub-section (2) of Section 20 of the Minimum Wages Act, 1948 under which the authority is empowered to condone the delay, if an application is filed beyond the period of six months showing sufficient cause for not making an application within time. No such application was filed by the applicant-opposite party no.3, before the opposite party no.4. Hence, order passed by opposite party no.4 on the merits of the case determining the minimum wages, overtime wages with direction to pay compensation three times of the amount claimed are invalid in the eye of law and the same is liable to be quashed.

4. The second ground urged is that since the minimum wages has been paid to the workmen as per the rates fixed by the Labour Department, the finding recorded in the impugned order that the minimum wages were not paid to the workers engaged is erroneous and not tenable. Therefore, the impugned order is liable to be set aside.

5. The third ground urged by the petitioner is that opposite party no.1 is the principal employer and therefore the order fastening the liability should have been passed against opposite party no.1. Hence, the impugned order is bad in law and liable to be quashed.

6. With reference to the aforesaid legal contentions, learned counsel Mr. Mishra, appearing on behalf of the opposite party no.1 sought to justify the impugned order passed by the Authority under the Minimum Wages Act placing strong reliance upon Clause-90 of the Agreement which casts a statutory obligation on the petitioner who is the contractor and agreed to pay the minimum wages fixed either by himself or sub-contractors or anybody through whom labourers are employed for the purpose of performing the contractual work of cleaning the railway coaches at Bhubaneswar Coaching Depot. It is contended that the said clause has been violated by the petitioner is the report of the opposite party no.3-Labour Enforcement Officer (Central), Bhubaneswar who is competent under the provisions of Minimum Wages Act. Though the petitioner agreed to abide by Clause-90 of the Agreement and pay the minimum wages, the same has not been paid to the concerned workmen which revealed from the preliminary enquiry conducted by opposite party no.3 after ascertaining the same from the workers. Therefore, opp. party no.3 has filed application before the Regional Labour Commissioner (Central), Bhubaneswar and opportunity was given to the petitioner for filing objection to the said application. Accordingly, objection was filed by the petitioner. The said claim was disposed of by the Authority with the aforesaid direction to the petitioner.

7. Further, learned counsel Mr. Mishra has invited our attention to Clauses 77 and 78 of the Agreement which provide for withholding and lien in respect of the sums claimed. Clause-77 provides that whenever any claim or claims for payment of a sum of money arises out of or under the contract against the Contractor, the Railway shall be entitled to withhold and also have a lien to retain such sum or sums in whole the Railway shall be entitled to withhold the said cash security deposit or the security if any, furnished as the case may be and also have a lien over the same pending finalization or adjudication of any such claim. The claim includes payment of minimum wages as

agreed to under Clause-90 of the Agreement. Clause-78 also provides for lien in respect of claims in other contracts in which security deposit is made by the petitioner.

8. It is the duty of the opposite party-Railways having entered into an agreement to get its work done for cleaning the coaches at Bhubaneswar Depot by adopting advanced machinery and engaging employees. The payment of minimum wages by the petitioner shall be enforced under the terms and conditions of the contract and amount of security deposit in respect of the contract can also be enforced and payment shall be made to the employees. Therefore, the order passed under the Minimum Wages Act directing the petitioner to pay the minimum wages, overtime wages and the compensation of three times of the amount claimed is legal and justifiable in law.

9. Further on technical ground, it is contended that the claim is barred by limitation in the interest of justice on fixing the minimum wages under the Minimum Wages Act, 1948 paid to the workers employed by him who earned their livelihood through labour if that has been done. The Apex Court in a catena of decisions held that it is in violation of the fundamental rights guaranteed under Article 21 of the Constitution of India is one of the reasons assigned for awarding compensation. This Court can exercise its discretionary power to condone the delay so that fundamental rights of a large number of workers employed by the petitioner can be protected since the petitioner had agreed under Clause-90 to pay minimum wages as it is statutorily liable to pay the minimum wages to the workers engaged. The finding recorded on the basis of the claim made by the Labour Enforcement Officer is that the minimum wages was not paid to the workers although the petitioner has contended that minimum wages are already paid. To evidence that fact, no documentary evidence is produced. Therefore, the finding of fact recorded by the Fact Finding Authority need not be interfered with. If there is any delay, this Court for the interest of rendering social justice to the labourers who have been excluded from payment of minimum wages after getting the work done by engaging the workmen and getting the amount received from the railways, this Court can exercise its power what the Minimum Wages Authority can do. He has placed reliance in the decision of the Supreme Court in the case of **Gujarat Steel Tubes Ltd etc. vs. Gujarat Steel Tubes Mazdoor Sabha & ors.**, reported in AIR 1980 SC 1896 wherein the Supreme Court at paragraph-79 laid down the legal principles. He, therefore, submits that on that ground the application is barred by limitation as no application is filed and therefore, the order passed by the Authority is a nullity in the eye of law, hence the same is liable to be quashed. The above contention urged on behalf of the petitioner need not be accepted as this Court can exercise its power and grant the relief as that of the Original Authority instead of remanding the matter giving opportunity to the opposite party no.3 to file application explaining the delay in approaching the Minimum Wages Authority beyond the period of six months. Further, he has placed strong reliance upon Clause 82-B of the Agreement regarding claim for arbitration, if the security deposit of this contract and other contracts are withheld and paid towards the minimum wages and compensation awarded to the workers, and if any dispute is raised by the petitioner in this regard against opposite party no.1, it shall work out its right by raising claim and getting the matter referred to the Arbitration and get the dispute resolved. Therefore, he submits that the impugned order does not call for interference and requests this Court for dismissal of the writ petition.

10. With reference to the aforesaid rival factual and legal contentions urged on behalf of the parties, the following points would arise for consideration of this Court.

- (i) Whether the impugned order passed by the Minimum Wages Authority is not maintainable in the absence of an application for condonation of delay and whether in such event, this Court can exercise its power even in the absence of application for seeking for condonation of delay?
- (ii) Whether the finding recorded in the impugned order that the minimum wages and overtime wages are not paid to the concerned workmen and order has been passed by the Minimum Wages Authority and also awarded the compensation of three times of amount claimed is legal and valid?
- (iii) What order?

11. All the points are required to be answered against the petitioner for the following reasons:-

It is not in dispute that the petitioner has entered into a contract with the opposite party no.1 to render service of cleaning of coaches by providing workers. Clause-90 of the Agreement casts contractual obligation on the part of the petitioner pursuant to the contract that it shall pay the minimum wages to the workers who are employed to discharge the contractual work for opposite party no.1. In this regard, opposite party no.3 conducted preliminary enquiry with regard to the claim of workers concerned who were employed by the petitioner. They have categorically stated that the minimum wages are not paid to them is the basis on which the application was filed by opposite party no.3 before opposite party no.4. The stand taken by the petitioner in these proceedings is that the order is a nullity in the eye of law as the claim petition was filed beyond the period of six months as stipulated under Section 20 of the Minimum Wages Act. This contention was not raised before the Minimum Wages authority. Nonetheless, the legal contention can be permitted to be urged in the present proceedings. This Court instead of remanding the matter to the Minimum Wages Authority with regard to the findings of the Authority that minimum wages not paid to the workmen in its order can exercise its power of Minimum Wages Authority to avoid any further delay in the proceedings to get their legitimate statutory dues. The workmen who were employed by the petitioner to execute his contractual work with opposite party no.1 and not paid the minimum wages to them, thereby the fundamental rights of those workmen were infringed which has been guaranteed under Article 21 of the Constitution of India is one of the reasons assigned in the impugned order after referring to the decisions of the Supreme Court referred to supra to award minimum wages and compensation in favour of the concerned workmen. In this regard, it is worthwhile to refer to the principle laid down by the Apex Court on which the power under Article 226 can be exercised by this Court as what the Minimum Wages Authority can do. The relevant paragraph 79 reads thus:-

“ The basis of this submission, as we conceive it, is the traditional limitations woven around high prerogative writs. Without examining the correctness of this limitation, we disregard it because while Article 226 has been inspired by the royal writs its sweep and scope exceed hide-bound British processes of yore. We are what we are because our Constitution framers have felt the need for a pervasive reserve power in the higher judiciary to right wrongs under our conditions. Heritage cannot hamstring nor custom constrict where the language used is wisely wide. The British paradigms are not necessarily models in the Indian Republic. So broad are the expressive expressions designedly used in

Article 226 that any order which should have been made by the lower authority could be made by the High Court. The very width of the power and the disinclination to meddle, except where gross injustice or fatal illegality and the like are present, inhibit the exercise but do not abolish the power.”

12. The aforesaid principle laid down by the Supreme Court is aptly applicable to the fact situation of the present case having regard to the illegality, injustice and miscarriage of justice done to the concerned workers by the petitioner in not paying the minimum wages to them for the period in question as mentioned in the order passed by the Minimum Wages Authority and we have to exercise our discretionary power to condone the delay in filing the application for computing the minimum wages and award compensation along with other monetary benefits as the Minimum Wages Authority has done justice to the workmen after placing reliance upon the decisions of the Apex Court. We accordingly condone the delay and supplement to the order passed by the Minimum Wages Authority to render justice to the workmen as their statutory rights has been flagrantly violated.

13. The findings of fact were recorded by the Minimum Wages Authority on the basis of the statement of counter and the evidence placed before the Minimum Wages Authority by opposite party no.3. In the absence of non-production of record by the petitioner-employer, the substantive plea taken in the statement of objection that the minimum wages were paid to the workmen, he has not proved his case. The petitioner should have discharged its duty by producing positive and substantive evidence on record, viz., the Pay Acquittance Register, which was required to be maintained in the Establishment. The same has not been done in the instant case and the minimum wages are not paid to the workers. Adverse inference should have been drawn by the Minimum Wages Authority for non-production of such documentary evidence. However, no adverse inference has been drawn by opposite party no.4. The finding that minimum wages were not paid to the concerned workmen for the period in question is based on proper appreciation of legal evidence in the absence of positive documentary evidence required to be produced by the petitioner before the Minimum Wages Authority. Therefore, the finding of fact recorded by the Authority on the contentious issue cannot be termed as erroneous. Having recording the finding of fact that minimum wages were not paid by the petitioner to the concerned workmen for the period in question awarding the same with compensation three times of the amount claimed is also justified in view of the fact that under the provision of Section 20 read with sub-section (3) of the Minimum Wages Act, the Authority has the power to award ten times compensation. In the instant case, having regard to the findings of non-payment of minimum wages to the workmen it is in violation of fundamental rights guaranteed under Article 21 of the Constitution of India which is the ratio laid down by the Supreme Court in the case of *Bandhua Mukti Morcha Vs. Union of India*, reported in AIR 1984 SC 802. The Hon'ble Supreme Court in the case of *Sanjit Roy Vs. State of Rajasthan*, reported in (1983) 1 SCC 525, has held that the payment of less wages than the minimum wages is a violation of fundamental rights under Article 21 of the Constitution. In that view of the matter awarding compensation of three times of the minimum wages payable by the petitioner to the workmen is perfectly legal and valid, and it cannot be said that the same is on the higher side for the reason that the same could have been ten times more than the minimum wages payable to the workmen by the petitioner-employer awarded by the authority. That has not been done in the instant case and only compensation of three times of the amount claimed has been awarded which cannot be termed as arbitrary, unreasonable or on the higher side.

14. We do not find any cogent reason to interfere with the impugned order as the same is perfectly legal and valid. Hence, the petition is liable to be dismissed and is accordingly dismissed with cost of Rs.10,000/- (Rupees Ten Thousand) payable by the petitioner to the workmen.

Writ petition dismissed.