SUPREME COURT OF INDIA

Lingegowd Detective and Security Chamber Private Limited

Vs

Mysore Kirloskar Limited and Others

Appeal (Civil) 4494 of 2000; C.A. Nos. 4495-4498 of 2000

(Arijit Pasayat and Tarun Chatterjee, JJ)

04.05.2006

JUDGMENT

ARIJIT PASAYAT, J.

Challenge in this appeal is to the legality of judgment rendered by a Division Bench of the Karnataka High Court in Writ Appeal Nos. 5887/1997 and 6105-6107/1997. By the impugned judgment, the order passed by a learned Single Judge was set aside.

Background facts, in a nutshell, are as follows:

Aggrieved by the orders passed by the Authority under The Minimum Wages Act, 1948 (in short 'the Act'), the appellant-Lingegowd Detective & Security Chamber (P) Limited (appellant in C.A. No. 4497/2000) (in short 'Lingegowd') filed a writ petition praying for setting aside the orders on the ground that since its establishment of providing security personnel to various organization was not a scheduled employment as detailed in the Schedule to the Act (hereinafter referred to as the 'Schedule') and as no specific Notification was issued in that behalf, the impugned orders were without jurisdiction. The writ petitions were allowed holding that the workmen of Lingegowd were not entitled to grant of minimum wages. However, taking into account the beneficial nature of the provision, the learned Single Judge directed Mysore Kirloskar Limited, (appellants in Civil Appeal Nos.4495-4498/2000, hereinafter referred to as 'Mysore Kirloskar') to pay a sum of Rs.1, 00, 000/-

as ex-gratia to the workmen as the principal employer. The respondent-Chitradurga District Mazdoor Sangha (Regd.) & Ors. (hereinafter referred to as the 'Mazdoor Sangha') filed writ appeals contending that the learned Single Judge was not justified in his view regarding non-applicability of the Act to the undertaking of Lingegowd which employed several persons for rendering security services to the principal employer i.e. Mysore Kirloskar. The Division Bench of the High Court has held that where a person provides labour or services to another for remuneration, which is less than the minimum wages, the labour or services provided by him fell within the scope and ambit of the words "forced labour" under Article 23 of the Constitution of India, 1950 (hereinafter referred to as 'the Constitution') and, therefore, the orders passed by the Authority under the Act were not to be interfered with. It was further held that since the principal employer's activities were included in the list of Scheduled employments, under the Schedule to the Act, there was no necessity of issuance of a separate Notification with reference to the employment of security staff procured through Lingegowd. Reliance was placed on several decisions relating to the true essence of the expression "right to life" as appearing in Article 21 of the Constitution.

In support of the appeals filed by Lingegowd, Mr. Dayan Krishnan, learned counsel has submitted that the Division Bench relied upon judgments which have no relevance to the subject matter of dispute. In fact, the learned Single Judge had analysed the basic issues in great detail and had come to the right conclusion that Lingegowd had no liability. It was further submitted that the view of the learned Single Judge was correct except to the extent that it was held that the appellants had joint and several liability along with the principal employer for payment of rupees one lakh to the concerned employees.

Mr. Rajesh Mahale, learned counsel appearing for Mysore Kirloskar adopted the reasoning given by the High Court. There is no appearance on behalf of the Sangh.

This Court had occasion to deal with the question regarding the specified establishments. In Madhya Pradesh Mineral Industry Association v. The Regional Labour Commissioner, Jabalpur and Ors. , it was observed as follows:

"Before dealing with the vires of the impugned notification it would be material to examine the relevant provisions of the Act. The Act has been passed to provide for minimum rates of wages in certain employments. Section 2(b) defines the appropriate government as meaning, inter alia (1) in relation to any scheduled employment carried on by or under the Authority of the Central Government or in relation to a mine the Central Government, and (2) in relation to any other scheduled employment the State Government. It would thus appear that the Legislature intended that the provisions of the Act may in due course be extended to mines and so it has prescribed that in respect thereof the Central Government would be the appropriate Government. Section 2(e) defines an employer as meaning, inter alia, 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. Section 2(g) defines scheduled employment as meaning an employment specified in the schedule or any process or branch of work forming part of such employment. Section 3 authorizes the appropriate government to fix minimum rates of wages in regard to the employments specified in Parts I and II of the Schedule respectively and prescribes the procedure in that behalf. Section 5 lays down the procedure for the fixing and revising of minimum wages. Section 5(2) provides that after following

the procedure prescribed by the said section the appropriate government shall by notification in the official gazette fix, or as the case may be, revise the minimum rates of wages in respect of each scheduled employment, and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue. There is only one more section which needs to be mentioned; i.e. Section 27 which empowers the appropriate government to add to either part of the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act after following the procedure prescribed by it, and the section adds that after the notification is thus issued the Schedule shall, in its application to the State, be deemed to be amended accordingly.

It is thus clear that the whole scheme of the Act is intended to work in regard to the employments specified in Part I and Part II of the Schedule and the Legislature has wisely left it to the appropriate government to decide to what employments the Act should be extended and in what areas. Section 5(2) empowers the appropriate government to fix or revise minimum wages in regard to any of the employments in the Schedule to which the Act applies. This power can be exercised only if the employment in question is specified in the Schedule and the Act is therefore applicable to it. Section 27 confers a wider power on the appropriate government, and in exercise of the said power the appropriate government may add an employment to the Schedule. The nature and extent of the said two powers are thus quite separate and distinct and there can be no doubt that what can be done by the appropriate government in exercise of its power under Section 27 cannot be done by it in exercise of its power under Section 5(2). It is significant that the impugned notification has been issued by the Madhya Pradesh Government by virtue of the powers under Section 5(2) of the Act which have been delegated to it by the President in exercise of his authority under Article 258 of the Constitution. The main argument urged by Mr. Bobde is that the impugned notification is ultra vires of Section 5(2) because stone- breaking and stone-crushing operations in manganese mines do not fall under any of the items in Part I of the Schedule. The dispute thus raised really lies within a very narrow compass: Does employment in stone-breaking or in stone-crushing operations carried on in mines specified in the impugned notification amount to employment in stone-breaking or stone-crushing which is item 8 in Part I of the Schedule to the Act? It is common ground that the employment in question does not fall under any other item in Part I." (Underlined for emphasis)

Again in M/s. Bhikusa Yamasa Kahatriya v. Sangamner Akola Taluka Bidi Kamgar Union , it was observed as follows:

"The object and policy of the Legislature appear on the face of the Act. The object of the Act is to prevent exploitation of the workers, and for that purpose it aims at fixation of minimum wages which the employers must pay. The Legislature undoubtedly intended to apply the Act to those industries or localities in which by reason of causes such as unorganized labour or absence of machinery for regulation of wages, the wages paid to workers were, in the light of the general level of wages, and subsistence level, inadequate. Conditions of labour vary in different industries and from locality to locality, and the expediency of fixing minimum wages, and the rates thereof depends largely upon diverse factors which in their very nature are variable and can properly be ascertained by the Government which is in charge of the administration of the State. It is to carry out effectively the purpose of this enactment that power has been given to the appropriate Government to decide, with reference to local conditions, whether it is desirable that minimum wages should be fixed in regard to any scheduled trade or industry, in any locality, and if it be deemed expedient to do so, the rates at which the wages should be fixed in respect of that industry in the locality. By entrusting authority

to the appropriate Government to determine the minimum wages for any industry in any locality or generally, the legislature has not divested itself of its authority, nor has it conferred uncontrolled power upon the State Government. The power conferred is subordinate and accessory for carrying out the purpose and the policy of the Act. By entrusting to the State Government power to fix minimum wage for any particular locality or localities the Legislature has not stripped itself of its essential legislative power but has merely entrusted what is merely an incidental function of making a distinction having regard to the special circumstances prevailing in different localities in the matter of fixation of rates of minimum wages. Power to fix minimum rates of wages does not by itself invest the appropriate Government with authority to make unlawful discrimination between employers in different industries. Selective application of a law according to the exigencies where it is sanctioned, ordinarily results in permissible classification. Article 14 forbids class legislation but does not prohibit reasonable classification for the purpose of legislation. If the basis of classification is indicated expressly or by implication, by delegating the function of working out the details of a scheme, according to the objects of the statute the principles inherent therein, to a body which has the means to do so at its command the legislation will not be exposed to the attach of unconstitutionality, in other words, even if the statute itself does not make a classification for the purpose of applying its provisions, and leaves to a responsible body to select and classify persons, objects, transactions, localities or things for special treatment, and sets out the policy or principles for its guidance in the exercise of its authority in the matter of selection, the statute will not be struck down as infringing Article 14 of the Constitution. This principle is well recognized." (Underlined for emphasis)

In Haryana Unrecognised Schools' Association v. State of Haryana, it was observed as follows:

"There cannot be any dispute with the proposition that while construing the provisions of a statute like Minimum Wages Act a beneficial interpretation has to be preferred which advances the object of the Act. But nevertheless it has to be borne in mind that the beneficial interpretation should relate only to those employments which are intended to be covered by the Act and not to others. Section 3 of the Act provides that the appropriate Government shall, in the manner hereinafter provided fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either part by notification under Section 27. The expression 'employee' has been defined in Section 2(i) of the Act thus :

"Employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out- worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purpose of the trade or business of that other person where the process is to be carried out either in the home of the out- worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the Union."

Section 27 enables the State Government to add to either part of the schedule any employment in respect of which it is of the opinion that minimum rates of wages should be fixed under the Act.

Section 27 reads thus:

"The appropriate Government, after giving by notification in the Official Gazette not less than three months' notice of its intention so to do may, by like notification add to either part of the 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.

A combined reading of the aforesaid provisions as well as the object of the legislation as indicated earlier makes it explicitly clear that the State Government can add to either part of the Schedule any employment where persons are employed for hire or reward to do any work skilled or unskilled, manual or clerical. If the persons employed do not do the work of any skilled or unskilled or of a manual or clerical nature then it would not be possible for the State Government to include such an employment in the Schedule in exercise of power under Section 27 of the Act. Since the teachers of an educational institution are not employed to do any skilled or unskilled or manual or clerical work and, therefore, could not be held to be an employee under Section 2(i) of the Act, it is beyond the competence of the State Government to bring them under the purview of the Act by adding the employment in education institution in the Schedule in exercise of power under Section 27 of the Act. This Court while examining the question whether the teachers employed in a school are workmen under the Industrial Disputes Act had observed in A. Sundarambal v. Govt. of Goa, Daman & Diu. (SCC P. 48 para 10). $ " (Underlined for emphasis)

In this case, it was held that the Statute cannot be extended to those not intended to be covered by the Statute concerned. It was, however, noted that Section 27 enables the State Government to power to add to that part of the Schedule any employment in respect of which it is of the opinion that minimum rates of wages should be fixed under the Act.

In Patel Ishwerbhai Prahladbhai etc.etc. Vs. The Taluka Development Officer and Ors. it was observed at paragraph -7 as follows:

"Section 3 of the Minimum Wages Act, 1948 provides for he appropriate Government, in the manner provided in the Act, fixing minimum rates of wages payable to employees employed in an employment specified in Part I and Part II of the Schedule and in any other employment added to either Part by notification under Section 27 of the Act subject to the proviso to Section 3(1)(A) and has power to review at such intervals as it thinks fit, such intervals not exceeding 5 years, the minimum rates of wages so fixed and revise the minimum rates, if necessary, subject to the proviso to clause (b) of sub-section (1) of Section3. Section 2(i) of the Act defines "employee" as meaning "any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed and includes an out worker." "Employer" is defined in Section 2(e) of the Act as "any person who employees, 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 wages have been fixed under the Act and includes, except in sub-section (3) of Section 26". (i)...(ii).....(iii) in any scheduled employment under any local authority in respect of which minimum rates of wages

have been fixed under the Act, the person appointed by such authority for the supervision and control of the employees or where no employee is so appointed, the Chief Executive Officer of the local authority; and (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 the Act, any person responsible to the owner for the supervision and control of the employees or for the payment of wages." We are not concerned in these appeals with Section 26(3) of the Act. Section 2(g) defines "scheduled employment" as meaning "an employment specified in the Schedule or any process or branch of work forming part of such employment". "Employment under any local authority" is item 6 in the Schedule of the Act."

The learned Single Judge was, therefore, justified in his view that the appellant-Lingegowd had no liability to pay the minimum wages. The detective services do not form part of the scheduled employment as detailed in the Schedule. It was also justified in holding that there was no employee-employer relationship so far as the appellant-Mysore Kirloskar and the concerned workmen are concerned. The Division Bench unfortunately did not address itself to the relevant aspects and referred to the decision in People's Union for Democratic Rights & Ors. v. Union of India & Ors. which was rendered on a totally different context.

Though the Division Bench referred to the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (in short 'the Contract Labour Act'), the same has no relevance so far as the present dispute is concerned.

Therefore, the order of the learned Single Judge is restored and that of the Division Bench is set aside. It is made clear that Mysore Kirloskar having not challenged learned Single Judge's order, is required to make the payment, as directed by learned Single Judge. Since the learned Single Judge had held that Lingegowd was not required to pay the minimum wages, as the nature of services rendered by it was not a schedule employment, the question of it having joint and several liability to pay a sum of Rs.1, 00, 000/- along with Mysore Kirloskar can not arise. The payment shall be made, if not already made, by Mysore Kirloskar within a period of six weeks from today.

The appeals are allowed to the aforesaid extent. No costs.