

Supreme Court of India

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Airfreight Ltd. vs State Of Karnataka & Ors. on 4 August, 1999

Equivalent citations: AIR 1999 SC 2459, JT 1999 (5) SC 320, (1999) ILLJ 705 SC

Author: Shah

Bench: D Wadhwa, M Shah

JUDGMENT

M.B. Shah, J.

1. Leave granted.

2. This appeal by special leave is filed against the judgment and order dated 16th October, 1998 passed by the Division Bench of the High Court of Karnataka at Bangalore in Appeal No. 2502 of 1998 dismissing the appeals filed by the appellant-company and confirming the order passed by the learned Single Judge in Writ Petition No. 23096 of 1997.

3. Writ Petition was filed in the High Court of Karnataka for a declaration that the Notification dated 19* August, 1987 issued by the State Government in exercise of the power under Section 27 of the Minimum Wages Act (hereinafter referred to as "the Act") fixing the minimum rates of wages payable to the categories of employees as specified in the said Notification for Item No. 28, namely, "shops and commercial establishments" under the Act, was not applicable to the appellant-industry and also for setting aside the order dated 31st July, 1997 passed by the Labour Officer (the Competent Authority) under the Minimum Wages Act.

4. Respondent-employees contended that appellant was required to pay variable dearness allowance on the basis of the Notification issued under Section 3 read with Section 5 of the Act. Applications under Section 20(2) of the Act were filed as the employer failed to pay the said amount. The Labour Officer directed that each employee was entitled to the difference of minimum wages to the extent of Rs. 8,740 by way of variable dearness allowance in terms of the Notification. The competent authority also directed the employer to pay compensation under Section 20(3) of the Act. However, that part of the order directing employer to pay compensation is set aside by the High Court.

5. At the time of hearing of this appeal, Mr. Cama, learned Counsel for the appellant, submitted that

(a) the appellant company does not come under the categories of "shops and commercial establishments" as defined under the provisions of the Karnataka Shops and Commercial Establishment Act, 1961, and, therefore, the Notification under the Minimum Wages Act which applies to shops and commercial establishments would not be applicable to the appellant-company.

(b) the learned Counsel contended that the appellant-company is paying total pay packet which is more than minimum wages prescribed under the Notification and, therefore, (i) the Notification is not applicable and (ii) in any case, there is no violation of the said Notification. He clarified that appellant-company is paying more than the minimum wages, but the Company is not bifurcating the basic wages and dearness allowance. He submitted that under the Act it is not required to divide minimum wages into two parts, one as basic wages and other as dearness allowance.

6. In our view the contention that the appellant-company is not covered by the expression "shops and commercial establishments" has no merit. It is admitted by the appellant-company before the competent authority (Labour Officer) that the appellant-company is engaged in import and export-clearance and forwarding of cargo, travel and tourism, import, consolidate and courier services and is having several offices situated at various places including New Delhi, Bombay, Calcutta, Madras, Ahmedabad, Bangalore, etc. It is

also admitted that it is registered as a commercial establishment which is engaged in courier, cargo, travel and related services. In the petition filed before the High Court, it was submitted by the appellant that the main activity of cargo division is handling incoming and outgoing shipment by air concerning clearing and forwarding; the type of services rendered are processing of custom clearance and export formalities; booking of space of air shipment; consolidation of inward air cargo international/domestic door to door express delivery of documents, parcels and packages; clearing and forwarding of goods entrusted to it for safe delivery by way of personal services and such other activities. For this purpose, the High Court has appreciated the evidence that was placed before the Labour Officer and we do not find any error that would call for interference. The High Court has also rightly referred to the common parlance meaning of the expression "shops and commercial establishment" on the ground that Item 28 is added in the Central Act where the said expression is not defined. In our view, the activities which are carried out by the appellant, leave no doubt that it would be covered by the expression "shops" and/or "commercial establishment" as understood in the ordinary common parlance. What the appellant-establishment is doing is purely a commercial activity with profit motive, hence, commercial establishment. It can also be termed as a shop where services are sold on retail basis. For this purpose, it is not necessary to refer to various decisions of this Court in detail which deal with the meaning of the expression "shops and/or commercial establishment". In Hindu Jea Band v. Regional Director, ESIC shop was held to be "a place where services are sold on retail basis" and, therefore, making available on payment of a stipulated price the services of musicians employed by the petitioner on wages made the petitioner's establishment a 'shop'. In International Ore and Fertilizers (India) Pvt. Ltd. v. Employees State Insurance Corporation [1987] 3 SCC 203 the petitioner carried on activities facilitating the sale of goods by its foreign principals to the State Trading Corporation or the Minerals and Metals Corporation; it arranged for the unloading of such goods and, their survey; upon delivery it collected the price payable and remitted to its foreign principals. These were considered to be trading activities, although the goods imported were not actually brought to the petitioner's premises but were delivered to the purchaser there and the premises was held to be a shop. In the case of Cochin Shipping Co. v. E.S.I. Corporation wherein the company was engaged in the business of clearing and forwarding at the Port of Cochin situated in Willingdon Island the question was whether the establishment with the company is a 'shop' within the meaning of the expression as used in the Notification under the E.S.I. Act? The Court held that company was rendering service to cater to the needs of exporters and importers and others who want to carry the goods further. Therefore, it is a shop carrying on systematic, economic or commercial activity. Further, in the case of Employees' State Insurance Corporation v. R.K. Swamy and Ors. the Court held that "the word 'shop' has acquired expanded meaning and means a place where services are sold on retail basis". The Court further observed that the Employees State Insurance Act, 1948 was a beneficial legislation and, therefore, it was reasonably possible so to construe the word 'shop' as to include the activity of an advertising agency within it.

7. Further even taking into consideration the meaning given to the expression "commercial establishment" and the word "shop" under Section 2(e) and 2(u) respectively of the Mysore Shops and Commercial Establishments Act, 1961, it is apparent that the appellant-company is a 'commercial establishment' and also a 'shop'. Section 2(e) and 2(u) read as under:

2(e) - "Commercial Establishment" means a commercial or trading or banking or insurance establishment, an establishment or administrative service in which persons employed or mainly engaged in office work, a hotel, restaurant, boarding or eating house, a cafe or any other refreshment house, a theatre or any other place of public amusement or entertainment and includes such establishments as the State Government by Notification declare to be a commercial establishment for the purposes of this Act

2(u) - "Shop" means any premises where any trade or business is carried on or where services are rendered to customers, and includes officers, storerooms, godowns, or warehouses, whether in the same premises or otherwise, used in connection with such trade or business, but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop fall within the scope of the Factories Act, 1948.

8. The activities stated above carried on by the appellant-company would be covered by the definition of the word "shop" which inter alia means any premises where trade or business is carried on or where the services are rendered to customers. It would also be commercial establishment and/or trading establishment. Hence, the contention of the appellant that it would not be covered by the said definition has no substance.

9. Learned Counsel for the appellant submitted that appellant-company is paying more than minimum wages and, therefore, the Notification issued by the State Government would not be applicable to the appellant. He submitted that in any case before issuing the said Notification, the State Government was required to verify and ascertain whether the appellant-company was paying more or less than minimum wages to its employees and if so, to exclude or include it from the operation of the Notification. He relied upon } following observation of this Court in the case of Bhikusa Yamasa Kshatriya and Anr. v. Sangamner Akola Tatuka Bidi Kamgar Union and Ors. , in support of his contention:

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 unorganised 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 incharge of the administration of the State.

10. These observations are made while dealing with the contention that the Legislature abdicated itself of its authority by empowering 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 and in that context, it is held that the Legislature has not stripped itself of its essential legislative power but has entrusted what is an incidental function of making a distinction having regard to the special circumstances in different localities in the matter of fixation of rates of minimum wages. In our view, reliance placed upon the aforesaid observation has no bearing to the contention raised by the learned Counsel of the appellant. This would not mean that if some employer of the shop or establishment is paying more than minimum wages, it should be specifically excluded from its operation of the Act. At any point of time, if it pays less than minimum wages, the said employer would be liable to be dealt with in accordance with law and would be compelled to pay the same. The process of making the Act applicable to certain industries or establishments situated in particular localities does not require that the State Government should make distinction with each and every shop and establishment by actual verification whether they were paying minimum wages or not. The Notification is made applicable to all shops and commercial establishments in the State of Karnataka where the State has found that the labour was unorganised or that wages paid to the workers were below minimum wages. At this stage we would refer to the decision in Kamani Metals & Alloys Ltd. v. Their Workmen

wherein the Court observed as under:

Broadly speaking the first principle is that there is a minimum wage which, in any event, must be paid, irrespective of the extent of profits, the financial condition of the establishment or the availability of workmen on lower wages. This minimum wage is independent of the kind of industry and applies to all alike big or small. It sets the lowest limit below which wages cannot be allowed to sink in all humanity.

11. Hence, the submission of the learned Counsel that as the appellant company is paying more than minimum wages (as alleged), the Notification under the Act would not be applicable to it, has no substance.

12. Mr. Cama, learned Counsel for the appellant relied upon the decision in the case of Municipal Council, Hatta v. Bhagat Singh and Ors. for contending that where employees are getting better wages under the contract, the provisions of the Minimum Wages Act would not be applicable. In our view, the aforesaid

decision is based upon the interpretation of Section 14 of the Act wherein the Court has observed that overtime under Section 14 is payable to those employees who are getting minimum rate of wage as prescribed under the Minimum Wages Act and does not apply to those getting better wages under other statutory rules. Payment of wages at the minimum rates is the lowest limit and to pay the same is a statutory obligation. But, it does not prevent employer in paying 'fair' or 'living' wages. It would also depend upon other statutory or contractual obligations. In view of the aforesaid discussion, in our view, the contention of the learned Counsel for the appellant that the Notification dated 19th August, 1987 would not be applicable to the appellant-company is without any substance.

13. The next contention of the learned Counsel for the appellant is that appellant is paying wages more than prescribed minimum wages and that wages paid by the appellant include basic wages plus dearness allowance, therefore, the direction issued by the Labour Officer to pay additional V.D.A. to respondents (employees) is illegal. It is also pointed out that in addition to wages, appellant is paying various allowances such as house rent allowance, education allowance, leave travel allowance, reimbursement of medical expenses, conveyance allowance, tiffin allowance, city compensatory allowance and attire allowance. Therefore, the direction issued by the Labour Officer to pay 'Variable Dearness Allowance' on the basis of the Notification issued by the State Government on 19* August, 1987 is illegal and apparently erroneous because he has not taken into consideration that the wages paid by the appellant include V.D.A. and are more than total of wages prescribed as minimum wages. As against this, it is the contention of the learned Counsel for the respondent that workmen are entitled for payment of minimum wages and Variable Dearness Allowance (VDA) in accordance with the Notification dated 19"1 August, 1987 issued under Section 3 read with Section 5 of the Act. Under the said Notification, minimum rates of wages consist of two components - one basic and the other, VDA. It is the mandatory requirement of the Act that the appellant must pay wages separately under both these different categories. Therefore, the appellant should pay contractual wages as paid by them and in addition to that V.D.A. is required to be paid separately as per the Notification.

14. For considering this contention, we would first refer to the Notifications issued by the State Government. By Notification dated 27-28 January, 1971, the Karnataka State Government in exercise of powers conferred by Section 27 of the Minimum Wages Act directed that in Part I of the Schedule to the said Act, after item No. 27, following item shall be added, namely:

28. Employment in shops and commercial establishments.

15. Thereafter, in exercise of the powers conferred by Sub-section (1) of Section 3 and Sub-section (1) of Section 5 of the Act, the State Government has fixed the rates of minimum wages payable to the categories of employees who are employed in any kind of work throughout the State of Karnataka in any of the shops and commercial establishments as specified in the Schedule. The Notification also provides for payment of V.D.A. at the rate specified therein. The Schedule is divided as under:

SCHEDULE

----- Sl. No. Classification Minimum Rates of Wages
per month -----

of work Zones Zones Zones Zones

----- 1 2 3 4 5 6

----- Thereafter, various groups are mentioned. For
illustration, Group No. 3 Item No. 12 reads as under:

----- 1 2 3 4 5 6

----- Skilled worker for
establishing upto. 495-45 482-50 469-70 450-25

16. It further provides as under:

The rates shown in this Notification are inclusive of the rates of dearness allowance as per the State's Average Consumer Price Index 1960+100 which is payable over and above 700 points. For every increase of points over and above 700 in the cost of Price Index number on the basis of State Average the following dearness allowance is payable:

----- Classification of Employees Rates of Cost of Living Allowance -----

1. --

2. --

3. Employees getting more

than Rs. 15 per day and per day &

above Rs. 450 per month. per point 3 ps.

17. The Dearness Allowance shall be calculated every year on the 1st of April on the basis of the average of the indices preceding 12 months i.e. January to December. In addition the Dearness Allowance will be calculated on a sliding basis going higher or lower depending on the Cost of Living.

18. Other relevant Clause (3) provides as under:

Wherever the prevailing rates of wages are higher, the higher rates of wages shall be continued to be paid.

19. The aforesaid Notification specifically states that it has fixed the minimum wages of various classes of employees working in shops and commercial establishments in the State of Karnataka. The rates of minimum wages mentioned in the Notification were inclusive of the rates of dearness allowance as per the State Average Consumer Price Index 1960 added 100 which was payable over and above 700 points. So the Notification makes it clear that it has taken into consideration cost of living allowance which is mentioned as the dearness allowance till the date of the Notification and for the future increase, it is linked with the rate of cost of living allowance. However, what is fixed by the State Government by the said Notification is the minimum 'wages' which includes dearness allowance. Hence from the aforesaid Notification itself, it can be stated that the contention of the learned Counsel for the respondent employees is without any substance because the Notification fixes minimum wages which includes dearness allowance. Thereafter for taking care of future increase in cost of living, dearness allowance is to be paid as prescribed in the said Notification. However, if there is no increase in cost of living, then there is no question of paying dearness allowance and minimum wages would be paid as stated therein. For the purpose of illustration, we have mentioned group no. 3 skilled worker where prescribed minimum wage is Rs. 495.45 for zone no. 3. The said rate of minimum wage includes dearness allowance till the date of the Notification and is not bifurcated. To contend that by the said Notification, minimum wage is fixed into two parts, namely, basic wages and other dearness allowance,

is without any basis as the total of both items constitutes the minimum wage which is required to be paid under the Notification. Further, as quoted above, the Notification specifically saves the rights of the employees who are getting more than minimum wages from their employer by providing a clause that 'wherever the prevailing rates of wages are higher, the higher rates of wages shall be continued to be paid'. It does not provide that in such cases in addition to 'higher wages' payable by the employer, VDA should also be paid. It is, therefore, rightly submitted by the learned Counsel for the appellant that appellant falls in this category and as the company is paying higher rates of wages prescribed by the said Notification, there is no question of payment wages plus V.D.A.

20. This would be further clear from the scheme and object of the Act and the relevant provisions. In the case of U. Unichoyi v. State of Kerala after referring to earlier decisions, this Court stated the purpose of the Act thus:

The Act purports to achieve is to prevent exploitation of labour and for that purpose authorises the appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries. In an under-developed country which faces the problem of unemployment on a very large scale it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum wage rates the capacity of the employer need not be considered. What is being prescribed is minimum wage rates which a welfare state assumes every employer must pay before he employees labour.

21. The Court further considered what are the components of minimum wages in context of the Act and after considering the evidence led before the Committee on Fair Wages observed as under:

The Committee came to the conclusion that a minimum wage must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the worker, and so it must also provide for some measure of education, medical requirements and amenities. The concept about the components of the minimum wage thus enunciated by the Committee has been generally accepted by industrial adjudication in this country. Sometimes the minimum wage is described as a bare minimum wage in order to distinguish it from the wage structure which is 'subsistence plus' or fair wage, but too much emphasis on the adjective "bare" in relation to the minimum wage is apt to lead to the erroneous assumption that the maintenance wage is a wage which enables the worker to cover his bare physical needs and keep himself just above starvation. That clearly is not intended by the concept of minimum wage. On the other hand since the capacity of the employer to pay is treated as irrelevant it is but right that no addition should be made to the components of the minimum wage which would take the minimum wage near the lower level of the fair wage, but the contents of this concept must ensure for the employee not only his sustenance and that of his family but must also preserve his efficiency as a worker. The Act contemplates that minimum wage rates should be fixed in the scheduled industries with the dual object of providing sustenance and maintenance of the worker and his family and preserving his efficiency as a worker.

22. Further the definition of word 'wages' and the manner prescribed under Sections 3 and 4 of the Act fixing the wages would make it clear that 'minimum wage' is one unit of fixed amount and for fixing the same, the authority is required to take into consideration various components of costs so that the worker gets minimum remuneration which can provide for sustenance and maintenance of the worker and his family and preserve his efficiency.

Section 2(h) defines 'wages' as under:

"Wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment (and includes house rent allowance), but does not include-

(i) the value of-

(A) any house, accommodation, supply of light, water, medical attendance, or

(b) any other amenity or any service excluded by general or special order of the appropriate government;

(ii) any contribution paid by the employer to any pension fund or provident fund or under any scheme of social insurance;

(iii) any travelling allowance or the value of any travelling concession;

(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(v) any gratuity payable on discharge;

23. Section 3, inter-alia, provides that appropriate Government shall in the manner provided, fix the minimum rates of wages payable to the employees employed in any employment specified in Part I or in Part II of the Schedule and in an employment added to other party by the Notification under Section 27 and said minimum wages are required to be reviewed at such intervals as the appropriate Government may think fit, but it is required to be reviewed and revised within 5 years. Section 4 which provides that minimum wage may consist of basic rate of wages and special allowance reads as under:

4. Minimum rate of wages

(1) Any minimum rate of wages fixed or revised by the appropriate government in respect of schedule employments under Section 3 may consist of-

(i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as the "cost of living allowance"); or

(ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of suppliers of essential commodities at concession rates, where so authorised; or

(iii) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

(2) The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rate shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate government.

24. As stated above minimum wage must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the worker and so it must also provide for some measure of education, medical requirements and amenities of himself and his family. While fixing the minimum wages, the capacity of the employer to pay is treated as irrelevant and the Act contemplates that rates of minimum wage should be fixed in schedule industries with a dual object of providing sustenance and maintenance of the worker and his family and preserving his efficiency as a worker. So it is required to take into consideration cost of bare subsistence of life and preservation of efficiency of the workers and for some measure of education, medical requirements and amenities. This cost is likely to vary depending upon the cost prevailing in the market of various items. If there are inflationary conditions prevailing in the country, then minimum wages fixed at a particular point of time would not serve the purpose. Therefore, Section 4 contemplates that minimum wages

fixed at a particular point of time should be revised from time to time. Section 4 postulates that minimum wages fixed or revised by the appropriate Government under Section 3 may consist of basic rates of wages and special allowance at a rate to be adjusted at such intervals in such manner as the appropriate Government may direct to accord as nearly as practicable with a variation in the cost of living index number applicable to such workers; alternatively, it permits the fixation of basic rate of wages with or without cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concessional rates where so authorised; or in the alternative, it permits an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of concessions, if any. The purpose of Section 4 is to see that minimum wage can be linked with increase in cost of living so that increase in cost of living can be neutralised or all inclusive rates of minimum wages can be fixed. But, from the aforesaid Sections 3 & 4, it is apparent that what is fixed is total remuneration which should be paid to the employees covered by the Schedule and not for payment of costs of different components which are taken into consideration for fixation of minimum rates of wages. It is thus clear that the concept of minimum wages does take in the factor of prevailing cost of essential commodities whenever such minimum wage is to be fixed. The idea of fixing such wage in the light of cost of living at a particular juncture of time and of neutralising the rising prices of essential commodities by linking up scales of minimum wages with the cost of living index is provided for in Section 4 but V.D.A. is part and parcel of wages. Once rates of minimum wages are prescribed under the Act, whether as all inclusive under Section 4(1)(iii) or by combining basic plus dearness allowance under Section 4(1)(i) are not amenable to split up. It is one pay package. Neither the scheme nor any provision of the Act provides that the rates of minimum wages are to be split up on the basis of the cost of each necessities taken into consideration for fixing the same. Hence, in cases where employer is paying total sum which is higher than minimum rates of wages fixed under the Act including the cost of living index (VDA), he is not required to pay VDA separately. However, that higher wages should be calculated as defined in Section 2(h) of the Act. Section 2(h) specifically provides that value of the following items are not required to be computed for finding out whether employer pays minimum wages as prescribed under the Act:

- (i) the value of any house, accommodation, supply of light, water, medical care, or any other amenity or any service excluded by general or special order of the appropriate Government.
- (ii) any pension fund or provident fund or under any scheme of social insurance
- (iii) any travelling allowance or the value of any travelling concession
- (iv) any sum paid to any person employed to defray special expenses curtailed on him by the nature of his employment or
- (v) any gratuities payable on discharge.

25. But while deciding the question of payment of minimum wages, the competent authority is not required to bifurcate each component of the costs of each item taken into consideration for fixing minimum wages, as lump sum amount is determined for providing adequate remuneration to the workman so that he can sustain and maintain himself and his family and also preserve his efficiency as a worker. Dearness Allowance is part and parcel of cost of necessities. In cases where the minimum rates of wages is linked up with V.D.A., it would not mean that it is a separate component which is required to be paid separately where the employer pays a total pay package which is more than the prescribed minimum rate of wages.

26. In the result, it is held that:

(1) The appellant-company would be covered by the expression "shops" and/or "commercial establishment" as it is carrying out various systematic commercial activities with profit motive and also it sells services on retail basis.

(2) The Notification issued under the Act prescribing minimum wages applies to all kinds of shops and commercial establishments - big or small - and that payment of more than prescribed minimum rates of wages is not relevant for deciding its applicability. It cannot be stated that as they are paying more than the prescribed minimum wages, the Act or the Notification would not be applicable. For determining whether they are paying minimum rates of wages or not, the amount paid for the value of items which are excluded under Section 2(h) of the Act is not to be taken into consideration.

(3) Minimum rate of wages fixed under the Act is remuneration payable to the worker as one package of fixed amount. In cases where minimum wage is linked with the cost of living index, the amount paid on the basis of dearness allowance is not to be taken as an independent component of the minimum wages but as part and parcel of the process of computing the rates of minimum wages which is to be determined after taking into consideration the cost of various necessities.

27. In this view of the matter, the order passed by the High Court holding that the State Government has fixed two separate categories of minimum rates of wages to be paid to the employees - one basic and other 'other allowance', that is, DA, is erroneous and is set aside. The matter is remanded to the Labour Officer (the competent authority under the Minimum Wages Act) for fresh decision in accordance with law. The appeal is allowed to the aforesaid extent with no order as to costs.