

RAM KUMAR MISRA

v.

STATE OF BIHAR AND OTHERS

September 21, 1983

[P. N. BHAGWATI, AMARENDRA NATH SEN AND  
RANGANATH MISRA, JJ.]

*Minimum Wages Act, 1948—Schedule—Entry 27—Scope of—Applicable to employment in ferries plying across Ganges in Bihar.*

*Bihar Shops & Establishments Act, 1953—Sec. 2(6)—Definition of 'Establishment'—Scope of—Business of trade of plying ferries across Ganges—An establishment.*

The petitioner complained that the workmen employed in the two ferries, one at Bhagalpur and the other at Sultanganj, operated by respondent No. 5 were not being paid minimum wages as prescribed by the relevant notifications issued by the State of Bihar under the Minimum Wages Act, 1948. Respondent No. 5 contended that the Minimum Wages Act was not applicable to these two ferries.

Allowing the writ petition,

HELD : The Schedule to the Minimum Wages Act lists various employments in respect of which minimum rates of wages can be fixed by the appropriate Government. Entry 27 of the Schedule which dealt with employment in shops and establishments registered under the Bihar Shops and Establishments Act, 1953, was amended on 25.11.1978 to enlarge its scope to cover employment in any shop or establishment other than that covered under any of the other entries in the Schedule. It is clear from the Explanation to the amended Entry 27 that the word "establishment" in that entry has the same meaning which is assigned to it in the Bihar Shops and Establishments Act, 1953 and the court must, therefore, look at the definition of "establishment" as given in the Bihar Shops and Establishments Act, 1953 in order to determine as to whether the Bhagalpur and Sultanganj ferries could be said to be establishments within the meaning of the amended Entry 27. The word "establishment" is defined in sec. 2(6) of Bihar Shops and Establishments Act, 1953 to mean an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession. Now it can hardly be disputed that the Bhagalpur and Sultanganj ferries are establishments which carry on business or trade of plying ferries across the Ganges and they are clearly within the meaning of the word "establishment" in sec. 2(6) of the Bihar Shops and Establishments Act, 1953 and consequently they would also be establishments within the meaning

A of that expression as used in the amended Entry 27. The Minimum Wages Act, 1948 would, therefore, clearly be applicable to employment in the Bhagalpur, and Sultanganj ferries. [1014 D, G-H; 1015 A B G H; 1016A]

B The workmen employed in the Bhagalpur and Sultanganj ferries were entitled to receive minimum wage as set out in the Notification dated 25th June 1975 as amended by the Notification dated 20th January 1979 for the period from 20th January 1979 upto 25th November 1981 and thereafter at the rate fixed in the Notification dated 26th November 1981. [1016 F-G]

ORIGINAL JURISDICTION : Writ Petition (Criminal) No. 53 of 1983.

C (Under Article 32 of the Constitution of India)

*J. Verghese* for the Petitioner.

*A. K. Sanghi* and *D. Goburdhan* for the Respondent.

D The Judgment of the Court was delivered by

E BHAGWATI, J. This writ petition has been filed on the basis of a letter addressed by one Ram Kumar Misra, President of Free Legal Aid Committee, Bhagalpur. This letter complained that the workmen employed in two ferries one at Bhagalpur and the other at Sultanganj—which were being operated by respondent No. 5 were not being paid minimum wages as prescribed by the relevant notification issued under the Minimum Wages Act, 1948. The wages of the workmen employed in these two ferries were given in the annexure—to the letter and the amount of the difference between what the petitioner claimed to be the minimum wage payable to the workmen and the actual wage paid to them, was set out in the annexure. The letter was treated as a writ petition and by an order dated 25th January, 1983, this Court issued notice on the writ petition and on Mr. Goburdhan, learned Advocate, for the State of Bihar, waiving service of the notice, the District Magistrate, Bhagalpur and Ram Kumar Misra, the petitioner, were directed to jointly carry out an inquiry into the various averments made in the writ petition and submit a report within two weeks from the date of the order. The direction for holding an inquiry was given by us because we wanted to satisfy ourselves whether there was a prima facie case to proceed further with the writ petition. Pursuant to the order made by us, the District Magistrate, Bhagalpur and the petitioner conducted a joint inquiry into the various averments made

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in the writ petition and they finally submitted a report dated 23rd February, 1983 stating that in their opinion, in the light of the material gathered at the inquiry, the ferries operated by respondent No. 5 at Bhagalpur and Sultanganj were establishments to which the Minimum Wages Act, 1948 applied, since they fell within Entry 27 in the Schedule to the Act and respondent No. 5 was, therefore, liable to pay minimum wage to the workmen employed in the two ferries with effect from 20th January, 1979, that being the date when the notification issued under section 3(1) (a) of the Minimum Wages Act, 1948 was amended so as to make the minimum wage applicable to "employment in any shop or establishment other than that covered under any of the other entries in this Schedule."

We may point out that there was also one other complaint in the writ petition, namely, that the workmen were made to work as bonded labourers, but his complaint was not found to be correct by the District Magistrate, Bhagalpur and the petitioner in the Report made by them.

When the report was received by this Court, copies thereof were supplied to the learned Advocates appearing on behalf of the parties. Respondent No. 5, who was joined as respondent to the writ petitions on an application made by him and who appeared at the hearing of the writ petition, disputed the correctness of the report made by the District Magistrate, Bhagalpur and the petitioner. It is not necessary for us for the purpose of the present writ petition to go into the question whether the facts stated in the report are correct or not, because, as we have stated above, the report was called for by us for the purpose of satisfying ourselves that there was a *prima facie* case for respondent No. 5 to meet. The only question which was raised before us and argued vehemently on both sides was whether the Minimum Wages Act, 1948 applied at all to the Bhagalpur and Sultanganj ferries owned by respondent No. 5. The argument of respondent No. 5 was that the Minimum Wages Act, 1948 had no application to these two ferries since they did not fall within any of the entries in the Schedule to the Act, whereas, on the other hand, both the petitioner and the State Government argued that the Act applied to these two ferries because they were establishments within Entry 27 of the Schedule to the Act. These rival contentions raised a short question of construction of the relevant provisions of the Minimum Wages Act, 1948 and the notifications issued under that Act.

A The Minimum Wages Act, 1948 provides for fixation of  
 Minimum rates of wages in certain employments. Sec. 3(1) (a)  
 provides that the appropriate Government shall fix the minimum  
 rates of wages payable to employees employed in an employment  
 specified in Part I or Part II of the Schedule. Sub-section (IA) of  
 B Section 3 enacts that "Notwithstanding anything contained in sub-  
 sec. (1), the appropriate Government may refrain from fixing  
 minimum rates of wages in respect of any scheduled employment in  
 which there are in the whole state less than 1,000 employees engaged  
 in such employment." It is obvious that sub-sec. (IA) of sec. 3 does  
 not preclude the appropriate Government from fixing minimum  
 rates of wages in respect of any scheduled employment even if there  
 C are in the whole State less than 1,000 employees engaged in such  
 employment. It merely empowers the appropriate Government to  
 refrain from fixing minimum rates of wages in respect of such  
 employment. Leaving it open to the appropriate Government to  
 fix minimum rates of wages in respect of such employment, if it so  
 D thinks fit.

The Schedule to the Act lists various employments in respect  
 of which minimum rates of wages can be fixed by the appropriate  
 Government. Mr. Verghese, learned Advocate appearing on behalf  
 of the petitioner, relied on Entry 6 of the Schedule which reads  
 E "Employment under any local authority" but we do not think any  
 reliance can be placed upon it, because in the present case, the  
 workmen, on whose behalf claim of minimum wages has been made,  
 are not employed under any local authority. Respondent No. 5,  
 who is the employer of the workmen employed in the Bhagalpur  
 and Sultanganj ferries, is not a local authority; he is merely a lessee  
 F of the tolls of public ferry. Entry 6 in the schedule can, therefore,  
 have no application in the present case, but there is Entry 27 in the  
 Schedule which helps the petitioner. This Entry prior to its amend-  
 ment by the State Government on 25th November, 1978 read as  
 follows :

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 "27. Employment in Shops and Establishments  
 registered under the Bihar Shops and Establishments Act,  
 1953 other than those covered under any of the other  
 H entries in this Schedule."

The Bhagalpur and Sultanganj ferries were not establishments regis-  
 tered under the Bihar Shops and Establishments Act, 1953 and prima

facie, they would not, therefore, be covered by Entry 27 as it stood prior to 25th November, 1978. But Entry 27 was amended to enlarge its scope and the amended Entry ran as follows :

“27. Employment in any Shop or establishment other than that covered under any of the other entries in this Schedule.”

The State Government thereafter issued a Notification dated 20th January, 1979 in exercise of the powers conferred under sec. 3(1) (a) of the Minimum, Wages Act, 1948 amending an earlier Notification dated 25th June, 1975 under which rates of minimum wages were fixed for different categories of employees employed in shops and establishments registered under the Bihar Shops and Establishments Act, 1953 other than those covered under any of the other entries in the Schedule and by this amendment, the words “Employment in Shops and establishments registered under the Bihar Shops and Establishments Act, 1953 other than those covered under any of the other entries in this Schedule” were substituted by the words “Employment in any shop or establishment other than that covered under any of the other entries in this Schedule.” The object of the amendment was to make the Notification dated 25th June, 1975 applicable in relation to employment in any shop or establishment other than that covered under any of the other entries in the Schedule so as to bring it in line with the amended Entry 27 in the Schedule.

Now it is clear from the Explanation to the amended Entry 27 that the word “establishment” in that entry has the same meaning which is assigned to it in the Bihar Shops and Establishments Act, 1953 and we must, therefore, look at the definition of “establishment” as given in the Bihar Shops and Establishments Act, 1953 in order to determine as to whether the Bhagalpur and Sultanganj ferries could be said to be establishments within the meaning of the amended Entry 27. The word “establishment” is defined in sec. 2(6) of the Bihar Shops and Establishments Act, 1953 to mean an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession. Now it can hardly be disputed that the Bhagalpur and Sultanganj ferries are establishments which carry on business or trade of plying ferries across the Ganges and they are clearly within the meaning of the word “establishment” in sec. 2(6)

A of the Bihar Shops and Establishments Act, 1953 and consequently they would also be establishments within the meaning of that expression as used in the amended Entry 27. The Minimum Wages Act, 1948 would, therefore, clearly be applicable to employment in the Bhagalpur and Sulanganj ferries. Since the Notification dated 25th June, 1975 as amended by the Notification dated 20th January, B 1979 fixes rates of minimum wages for different categories of employees employed in any establishment, which would cover the Bhagalpur and Sultanganj ferries, there can be no doubt that the workmen employed in these two ferries were entitled to receive minimum wages as laid down in the Notification dated 25th June, C 1975 read with the Notification dated 20th January, 1979 with effect from the date of latter notification.

It appears that a further Notification was issued by the State Government on 26th November, 1981 in exercise of the powers D conferred under sec. 3(1) read with sec. 5(2) of the Minimum Wages Act, 1948 revising the minimum rates of wages for different categories of employees employed in any shop or establishment other than that E covered under any of the other entries in the Schedule. This Notification came into force with effect from 26th November, 1981. The workmen employed in Bhagalpur and Sultanganj ferries were, therefore, entitled to the revised minimum wage as set out in the Notification dated 26th November, 1981 with effect from that date.

We accordingly reach the conclusion that the workmen F employed in the Bhagalpur and Sultanganj ferries were entitled to receive minimum wage as set out in the Notification dated 25th June 1975 as amended by the Notification dated 20th January 1979 for the period from 20th January 1979 upto 25th November 1981 and thereafter at the rate fixed in the Notification dated 26th November G 1981. The question, however, remains whether the workmen were paid wages at these minimum rates. Since there is a dispute between the parties in regard to this question, the argument of the petitioner being that the workmen were not paid wages at these minimum rates, H while the contention of respondent No. 5 being that they were so paid, it becomes necessary to give directions for the purpose of determining whether the workmen employed in these two ferries were paid wages, at these minimum rates with effect from 20th January, 1979. We would therefore direct the Labour Department of the Government of Bihar to intimate to the petitioner as to which

is the appropriate authority under the Minimum wages Act, 1948 for adjudicating upon the claims of the workmen employed in these two ferries for arrears of minimum wage. The appropriate authority will, by adopting suitable means including the giving of publicity, invite the workmen to file their claims for arrears of minimum wage and not only the workmen will be entitled to file their claims but the petitioner who has moved this court will also be at liberty to file claims on behalf of the workmen for arrears of minimum wage. The appropriate authority will inquire into all such claims which may be filed before it by or on behalf of the workmen and determine, after giving full opportunity to respondent No. 5 of being heard in the matter, whether any and if so what arrears of minimum wage in the light of this judgment remain to be paid by respondent No. 5 to the workmen employed in these two ferries. The workmen will be entitled to appear before the appropriate authority either personally or through their agent or advocate and the petitioner will also be at liberty to appear before the appropriate authority on behalf of the workmen. If any amount is determined by the appropriate authority to be payable by respondent No. 5 to any of the workmen in respect of the arrears of minimum wage, respondent No. 5 is directed to make payment of the same within one month from the date of the order of the appropriate authority. The appropriate authority will carry out the directions given by us and complete the assignment entrusted to it within six months from today. We would also direct respondent No. 5 to pay to the workmen employed in these two ferries minimum wage at the rate fixed under the Notification dated 26th November 1981 or at such other revised rate or rates as may be fixed from time to time.

So far as the costs of the writ petition are concerned since the petitioner has come to this Court for the purpose of vindicating the rights of poor workmen, we would direct the State of Bihar to pay to the petitioner a sum of Rs. 2,000 by way of costs.

H.S.K.

*Petition allowed.*