

SECRETARY, PADIPPU K.S. SANGAM LRD.

v.

C. VARGHESE

MARCH 20, 2007

[DR. AR. LAKSHMANAN AND ALTAMAS KABIR, JJ.]

Labour Law:

Minimum Wages Act, 1939:

'Dairy Farming'—Co-operative Society engaged in purchasing milk from its members and distribution thereof—Employed milk tester for two hours daily on a fixed monthly payment—Employee claiming minimum wages under the Act—Held, activities of Society do not constitute 'dairy farming'—Employment in question does not attract provisions of the Act.

Appellant-Co-operative Society was engaged in purchasing milk from its members and its distribution. Respondent no. 1 was engaged as milk tester for two hours from 6.30 a.m. to 8.30 a.m. all days, on a consolidated monthly payment of Rs.350/-. Respondent no. 1 filed an application before the Deputy Labour Commissioner claiming minimum wages. The application was allowed. The appellant approached the High Court and the single Judge allowed the writ petition holding that the Minimum Wages Act was applicable to the 'dairy farming' and was not applicable to the employment in question. However, the Division Bench, in appeal, allowed the claim of respondent no. 1, and, therefore, the Society filed the appeal.

On the question: Whether the appellant-Society was engaged in 'dairy farming':

Allowing the appeal, the Court

HELD: The mere activity of buying milk by the appellant-Society from its members and distributing it, will not constitute 'dairy farming' when there is no rearing of milch cows and no agriculture or farming activity is carried on by the Society. The Division Bench of the High Court ought to have held that the appellant-society, which merely collects milk from its members and

A distributes the same, is not engaged in any employment scheduled under the Minimum Wages Act. [Para 9] [243-E-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1497 of 2007.

B From the Final Judgment and Order dated 24.2.2006 of the High Court of Kerala at Ernakulam in W.A. No. 1578 of 2004.

T.L.V. Iyer, Subramonium Prasad and Karun Mehta for the Appellant.

Dr. K.P. Kylasanatha Pillai and G. Ramakrishna Prasad for the Respondent.

C The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. 1. Delay condoned.

2. Leave granted.

D 3. Heard Mr.T.L.V.Iyer, learned senior counsel for the appellant and Dr.K.P.Kylasanatha Pillai, learned counsel for the respondent.

4. This appeal has been filed against the judgment and order dt.24.02.2006 passed by the High Court of Kerala in Writ Appeal No.1578 of 2004.

E 5. The only question arises for our consideration in this appeal is whether the appellant-society is engaged in 'dairy farming'.

F 6. The appellant is a co-operative Society registered under the Kerala Co-operative Societies Act, 1969 and engaged in the collection of milk from its members and distribution thereof. The respondent herein is a milk user in the appellant-society whose work, according to the appellant, is mainly between 6.30 a.m. and 8.30 a.m. on all days. As per the settlement arrived at before the District Labour Officer Kasergod on September 20, 1990, the respondent was being paid a consolidated pay of Rs.350/- per month from April 1, 1990. The Assistant Labour Officer, Kasergod also informed the appellant on 25.03.1998 that the milk producing in co-operative Societies had not been included under the Minimum Wages Act by any Notification and that there was no orders fixing minimum wages for employees of such society.

G 7. In the meanwhile, the respondent filed an application before the Deputy Labour Commissioner claiming payment of minimum wages under the

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Minimum Wages Act for the period 01.01.1993 to 31.12.1994 as if the said Act was applicable to co-operative Societies engaged in mere purchase of milk from members and distribution thereof. The application was allowed despite appellant's contest. The appellant challenged the decision before the High Court in writ proceedings contending that the employment in the Society was not a scheduled employment under the Act and, therefore, the second respondent was not competent to pass such an order for payment of minimum wages under the Act. A B

8. The learned Single Judge of the Kerala High Court accepted the contention and after a detailed reasoning held that the Act was not applicable to the employment in question which applied, inter alia, only to 'dairy farming'. This judgment has, however, been reversed by the Division Bench of the High Court with a view that even distribution of milk by a Society like the appellant will attract the provisions of the Act. C

9. We have heard extensive arguments advanced by the learned senior counsel for the appellant and learned counsel for the respondent-workman. In our view, the impact of the order passed by the Division Bench on the appellant is very serious. Admittedly, the first respondent was employed only as a milk tester. It is also not in dispute that the appellant-society is engaged in purchasing milk from its members and distributing it. It is also not in dispute that the appellant-society does not own cattle milch and they buy milk for the purpose of production of milk and 'dairy farming'. The contention of Dr.K.P.Kylasanatha Pillai, learned counsel for the respondent, is that the sale of milk does form part of the process of the production of milk which constitute 'dairy farming'. We are unable to countenance the said submission because it is only a part of the process of distribution of milk. In our view, the mere activity of buying milk from its members and distributing it will not constitute 'dairy farming' when there is no rearing of milch cows and no agriculture or farming activity is carried on by the Society. The High Court, in our opinion, ought to have held that the appellant-society which merely collects milk from its members and distributes is not engaged in any employment scheduled under the Act. This apart, the respondent's claim that it falls within the purview of 'dairy farming' in Schedule II cannot also be accepted and we are unable to accept the submission made by the learned counsel for the respondent and the reasoning given by the Division Bench of the High Court. We are, therefore, set aside the order passed by the High Court and allow the appeal filed by the appellant-society. D E F G H

A 10. During the pendency of the proceedings, the respondent was paid some salary including minimum wages. We make it clear that the amount which has already been paid shall not be recovered from the respondent. The appeal stands allowed accordingly.

11. No costs.

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R.P.

Appeal allowed.