

Patel Iswaerbhai Prahladbhai Etc. Etc vs Taluka Development Officer & Others on 28 January, 1983

Equivalent citations: 1983 AIR 336, 1983 SCR (2) 322, AIR 1983 SUPREME COURT 336, 1983 (1) SCC 403, 1983 LAB. I. C. 321, (1983) 1 GUJ LR 705, 1983 BBCJ 48, 1983 UJ (SC) 190, (1983) IJR 20 (SC), 1983 62 FJR 189, 1983 (1) MCC 67, 1983 (15) LAWYER 36, (1983) 96 MAD LW 26, (1983) 1 LABLJ 237, (1983) 1 LAB LN 499, 1983 SCC (L&S) 212, (1983) 46 FACLR 129, (1983) 1 SCWR 268

Author: A. Varadarajan

Bench: A. Varadarajan, Y.V. Chandrachud, Syed Murtaza Fazalali, V.D. Tulzapurkar, O. Chinnappa Reddy

PETITIONER:

PATEL ISWAERBHAJI PRAHLADBHAJI ETC. ETC.

Vs.

RESPONDENT:

TALUKA DEVELOPMENT OFFICER & OTHERS

DATE OF JUDGMENT 28/01/1983

BENCH:

VARADARAJAN, A. (J)

BENCH:

VARADARAJAN, A. (J)

CHANDRACHUD, Y.V. ((CJ)

FAZALALI, SYED MURTAZA

TULZAPURKAR, V.D.

REDDY, O. CHINNAPPA (J)

CITATION:

1983 AIR 336

1983 SCR (2) 322

1983 SCC (1) 403

1983 SCALE (1) 85

ACT:

Minimum Wages Act, 1948-Government servants employed in 'scheduled employment' under local authorities-Whether entitled to benefits under the Act ?

HEADNOTE:

The Minimum Wages Inspector of Mehsana District in Gujarat filed applications before the Minimum Wages

Authority praying for directions for payment of overtime wages to four tubewell operators working in Taluka and District Panchayats on the ground that they had been made to work for more hours than what was prescribed under the Minimum Wages Act, 1948. The said Authority dismissed the applications holding that though employment in any District Panchayat or Taluka Panchayat was 'scheduled employment' as per s. 2 (g) of the Act, the tubewell operators concerned being Government servants in Panchayat Service were not entitled to claim minimum wages under the Act. The revisions filed against the orders of the Authority were dismissed by the High Court.

Allowing the appeals,

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HELD: Section 3 of the Act provides for the appropriate government fixing minimum rates of wages payable to employees employed in an employment specified in Parts I and II of the Schedule. Section 2 (i) defines 'employee' as meaning any person who is employed for hire or reward to do any work in a 'scheduled employment'. Section 2(g) defines 'Scheduled employment' as meaning an employment specified in the Schedule and "Employment under any local authority" is included as item 6 of the schedule. [326 B-G]

'Employer' under s. 2 (e) being "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 wages have been fixed under the Act" the Panchayats under which the tubewell operators concerned are employed in scheduled employment would be 'employers' under the Act even though the tubewell operators are Government servants, for, under sub-s. (2) of s. 102 of the Gujarat Panchayat Act, 1961, a Secretary of a Gram Panchayat or Nagar Panchayat shall, subject to the control of the Sarpanch or Chairman, as the case may be, perform the duties mentioned in cls. (a) (b) (c) and (d) thereof and,

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under sub-s. (3) of that section, the other servants of the Panchayats shall perform such functions and duties and exercise such powers under the Act as may be imposed or conferred on them by the Panchayat subject to rules, if any, made in that behalf. Therefore, there can be no doubt that the tubewell operators concerned in these appeals, even though State Government servants, are employed in 'scheduled employment' under the local authority or authorities and are consequently entitled to minimum wages and other benefits under the Act. [326 H, 327 A-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals No. 127- 130 of 1975.

Appeal by Special leave from the Judgment and order dated 15th October, 1974 of the Gujarat High Court in Civil Revision Appln. Nos. 1434-1437 of 1973.

V.M. Tarkunde. Naresh Kumar Sharma and Vineet Kumar for the Appellant.

D.V. Patel, C.V. Subba Rao, Dy. Govt. Advocate, M.N. Shroff, G.N. Desai, R.N. Poddar and R.H. Dhebar for the Respondent (State).

P.H. Parekh for Respondents 1 and 2.

The Judgment of the Court was delivered by VARADARAJAN, J. These appeals by special leave are directed, against the judgment of the learned Chief Justice (B.J. Diwan) of the Gujarat High Court in Civil Revision Application Nos. 1434 to 1437 of 1973. Those Civil Revision Applications (hereinafter referred to as 'Revisions') were preferred against the judgment of the Civil Judge, (Junior Division) Vijapur as the authority appointed under s. 20(i) of the Minimum Wages Act, 1948 for Vijapur Taluka in Civil Misc. Applications Nos. 1 and 2 of 1970 and 1 and 2 of 1971 (hereinafter referred to as 'applications'). The four Revisions raised a common question of law and were disposed of by a common judgment.

The applications before the Minimum Wages Authority were filed by the Gujarat Government Labour officer and Minimum Wages Inspector for Mehsana district against the Taluka Development officer, Vijapur Taluka and District Development officer (Panchayat) Mehsana. The Minimum Wages Inspector contended in those applications that the four employees, Ishwerbhai Prahldbhai, Dayabhai Umeddass, Kanjibhai Shankarbhai and Nathalal Maganlal, working in the Taluka Panchayat and District Panchayat as Tube-well operators at Delva da and Vihar villages, fall within the Minimum Wages Act, 1948 (hereinafter referred to as the 'Act') and had been made to work for more hours than what is prescribed under the Act and they were entitled to over-time wages of Rs. 3018.40 and Rs. 3769.05 in respect of Ishwerbhai Prahldbhai and Dayabhai Umeddass respectively for the period from September 1969 to February 1970, and Rs. 3082/- for the period from October 1970 to March 1971 and Rs. 1178.25 for the transitional period of April and May 1971 in respect of Kanjibhai Shankarbhai and Rs. 3962.40 and Rs. 1237.80 for those identical periods in respect of Nathalal Maganlal. Directions under s. 20 of Act for payment of those amounts together with further sums for the period during which the applications were pending were prayed for in the applications. The respondents in the applications denied that the four employees are working under any District Panchayat and contended that they were work-charged employees in the State service and that on the introduction of Panchayat Raj in the State of Gujarat with effect from 1.4.1963 as per the Gujarat Panchayats Act, 1961, the maintenance of tube-wells and further extension of tube-wells and their maintenance and the work-charged establishment relating to the tube-wells were transferred to the District Panchayats by Government's Circular No. MNS/41162/V dated 27.3.1963 and the employees were continued as work charged employees by the District Panchayat and were transferred to and continued as such in the Panchayats. The respondents in the applications thus contended that the four employees concerned were employees of the State of Gujarat, whose terms and conditions of employment are subject to orders of the State Government and that they are paid out of the 100 per cent grant made by the State Government. The respondents in the applications further contended

that the terms and conditions of service of the work-charged employees of the State Government are governed by the P.W.D. Manual and that the four employees concerned are not entitled to the over-time wages claimed in the applications.

The Minimum Wages Authority found on the evidence adduced by the parties that the Tube-well operators concerned were State Government servants and not the servants of the Panchayats, that Panchayats exercised supervisory control over them and that it was not controverted by the applicant, before him that the Tube-well operators were employed by the State Government before 1.4.1963. Following the decision in *G.L. Shukla v. State of Gujarat*,⁽¹⁾ he found that Panchayat service is, like any other branch of service, service under the State, and he held that though employment in any District Panchayat or Taluka Panchayat is scheduled employment as per s. 2(g) of the Act, the Tube-well operators concerned being Government servants in Panchayat service are not entitled to claim minimum wages under the Act. In that view he dismissed the applications.

The Minimum Wages Inspector took the matter in revision before the High Court. Diwan, C. J., who heard these Revisions followed the decision of the Full Bench of the Gujarat High Court in Criminal Appeal No. 361 of 1972, disposed of on 2.5.1974, in which the ratio of the decision in *Shukla's* case was approved and held that Panchayat service was part of the service of the State and the Tube-well operators concerned are State Government servants holding civil posts. In that view the learned Chief Justice agreed with the Minimum Wages Authority that as State Government servants the Tube-well operators concerned are not entitled to the benefit of the Act and he dismissed the Revisions.

The point arising for consideration in these civil appeals is simple. The Minimum Wages Authority and the learned Chief Justice have found that the Tube-well operators are Gujarat State Government servants. That is the contention of the contesting respondents I and 2., viz. Taluka Development officer Vijapur, Taluka Panchayat and District Development officer, Mehsana District Panchayat, in these appeals. The contention of the State of Gujarat before us in Civil Appeal No. 359 of 1974 was that the employees in the District Panchayats and Taluka Panchayats constituted under the Gujarat Panchayat Act, 1961 and Talatis and Kotwals working in Gram and Nagar Panchayats in the local cadre of Panchayats constituted under that Act are Government servants and that the other employees in the local cadre are Panchayat employees and not State Government employees. In that appeal we have repelled the contention that employees of the local cadre, namely, Gram and Nagar Panchayat servants barring Talatis and Kotwals are Panchayat servants and not Government servants and held that they also are State Government servants like the District H Panchayat and Taluka Panchayat employees and Talatis and Kotwals working in the Gram and Nagar Panchayats.

Section 3 of the Minimum Wages Act, 1948 provides for the 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 s.27 of the Act subject to the proviso to s. 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 s. 3. 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 s. 2 (e) of the Act as "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 wages have been fixed under the Act and includes, except in sub-section (3) of s. 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 s. 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. Therefore, there can be no doubt that the Tube-well operators concerned in these appeals are in scheduled employment under the Panchayats. The question is whether, being Government servants, employed under the local authority, they are not entitled to minimum wages and other benefits under the Act. "Employer" under the Act being "any person who employs whether directly or through another person, or whether on behalf of himself or any other person, one or A more employees in any scheduled employment in respect of which minimum wages have been fixed under the Act", the Panchayat or Panchayats under which the Tube-well operators concerned are employed in scheduled employment would be "employers" under the Act even though they are Government servants, for under s. 102 (2) of the Gujarat Panchayat Act, 1961 a Secretary of a Gram Panchayat or Nagar Panchayat shall subject to the control of the Sarpanch or Chairman as the case may be, perform certain duties mentioned in clauses (a), (b), (c) and (d) to that sub- section and under sub-section (3) of that section the other servants of the panchayats shall perform such functions and duties and exercise such powers under the Act as may be imposed or conferred on them by the Panchayat, subject to rules, if any, made in this behalf. We are, therefore, of the opinion that the Tube-well operators concerned in these appeals, even though State Government servants, are employed in scheduled employment under the local authority or authorities and are consequently entitled to minimum wages and other benefits under the Act, it not being disputed that minimum wages have been fixed by the State Government in respect of Tube-well operators generally though that benefit has not been extended to the Tube-well operators concerned in these appeals. The appeals are accordingly allowed with costs. The applications before the Minimum Wages Authority are allowed as prayed for and the directions shall be issued as prayed for.

H.L.C.

Appeals allowed.