Kerala Rubber Foot Wear Manufacturers and Exporters Association and Others Vs State of Kerala and Others

Court: High Court Of Kerala

Date of Decision: Nov. 26, 2013

Citation: (2014) 140 FLR 840 : (2013) 4 KHC 841 : (2014) 1 KLJ 70 : (2014) 1 KLT 277 : (2013) 5 LLN 621 : (2014) LLR 415

Hon'ble Judges: K. Vinod Chandran, J

Bench: Single Bench

Advocate: U.K. Ramakrishnan, P. Vijayamma, V. Krishna Menon, U.K. Devidas, Prinsun Philip and Uma Gopinath, for the Appellant; Jacob Abraham and James Mathew Kadavan, Government Pleader, for the Respondent

Judgement

K. Vinod Chandran, J.
The Petitioners are, an Association and two Industries engaged in the ""Rubber Product Industry"" wherein the

Government sought to revise the Minimum Wages as per the Minimum Wages Act, 1948 (for brevity "the Act"). The Government in accordance

with Clause (b) of sub-section (1) of Section 5 of the Act brought out a Notification in the Official Gazette publishing the proposals for Revision of

the Minimum Wages for Unskilled Workers, Skilled Workers and Highly Skilled Workers employed in the Rubber Products Industry. The same is

produced herein as Ext. P2. Objections were called for from the Employers as well as the Employees and as is provided in the Proviso to sub-

section (2) of Section 5, the Advisory Board was also consulted. Such consultation is evident by the recommendation made by the Advisory

Board through Ext. P4(g). Subsequently, Government came out with Ext. P5-Notification revising the Minimum Wages and providing for such

Minimum Wages to be paid to various categories of Employees engaged in the Rubber Products Industry. Ext. P5 is assailed in this Writ Petition

on the ground that what had not been proposed in Ext. P1 has been additionally included in Ext. P5, i.e., the, service weightage, and the provision

for monthly basic wages for the Managerial Staff. One of the other contentions raised is that the Government while revising the Minimum Wages in

the Industry had not taken into account the vast disparity in the capacity of the Employers. I have heard learned Senior Counsel Sri U.K.

Ramakrishnan and the learned Government Pleader on behalf of Respondents 1 & 2 as also the 3rd Respondent.

2. The contention raised against the "service weightage" is insofar as the same having not figured in the proposals notified by the Government as

per Ext. P1 as also the same being not includable in the very Concept of Basic Wages. The learned Senior Counsel has placed reliance on Muir

Mills Co. Ltd., Kanpur Vs. Its Workmen, to contend that "service weightage" could not be included within the Concept of Basic Wages. The

contention of the Petitioners is that what is permitted to be fixed as Minimum Wages by the Act is the basic wages payable to a category of

Employees which shall be uniform, with respect to all the Employees coming within the category, engaged in the Industry. An incentive to be

provided by the Employer cannot be included within the concept of basic wages and the same would definitely be outside the power of the

Government acting under the specific provisions of the Act, is the argument.

3. Muir Mills Company Ltd. was a case in which the Employees were entitled to two types of additional emoluments. One, production linked

bonus and the other an incentive bonus, latter of which would be payable on a certain standard of production being achieved. The Government

under the provisions of the Industrial Disputes Act, 1947 (for brevity "the I.D. Act") made an order laying down the standards of basic wages and

dearness allowance. The Employers then raised the basic wage payable to that standard and discontinued the additional emoluments, which had,

by then become a part of the terms of service. The Management"s contention that the prescription of basic wages included the additional

emoluments was negatived. It was in that context that the Honourable Supreme Court, held that ""it is reasonable to think that only such emoluments

which are receivable by the Workmen generally, as a normal feature of their earnings and therefore, satisfy the characteristics of ""basic wage"" are

intended to be covered by the consolidation"". It is pertinent that the learned Judges of the Honourable Supreme Court also noticed that there may

be variables which could be taken into account by the Government while fixing such basic wages.

4. This Court is not convinced that the decision can be applied squarely in the present case, dealing with the fixation of Minimum Wages as per the

Act. The primary fallacy in the argument of the Petitioners, is that the additional emoluments were sought to be denied to the workers in the Muir

Mills"s case, on the strength of an order brought out to ensure a minimum standard of wages. Then it also has to be noticed that "service

weightage" as laid down by Ext. P5 would form a part of the basic wages, as is specifically stated in Ext. P5.

5. In providing for "service weightage", it cannot, also be said that the Government has exceeded its powers, since the weightage provided, would

not be uniform to all Employees. True, the Minimum Wages fixed, is fixed for a particular category of the Employees and that remains uniform to

that category of Employees engaged in the Rubber Products Industry. The prescription of "service weightage" as is provided under Ext. P5 is

specifically for continuous service in an establishment at the rate of 1% of the revised basic wages, for every completed year of service, provided

the Employee has three years continuous service in an establishment on the date of commencement of Ext. P5-Notification. This benefit was

provided in the nature of weightage for continuous service and was to be included in the ""basic wages"" prescribed by the Notification. This cannot

be said to be a component which is in the nature of an incentive but would only be a variable, which every Employee would be uniformly entitled

subject only to the continuous period of service rendered by the Employee.

6. The next contention with respect to the "service weightage" is that the same had not been included in the proposals. In fact, the provision for

monthly rate of wages also has been challenged on the ground that the same was not included in the proposals and the Employers never had an

opportunity to represent against the same. As has been laid down by the Honourable Supreme Court in Chandra Bhavan Boarding and Lodging,

Bangalore Vs. The State of Mysore and Another, the Government, on the information available with it, could always issue proposals and after

consultation with the Advisory Board, finalise the same revising the Minimum Wages prescribed for the Employees in a particular Industry. The

question raised is whether the Government is competent to finalise only those proposals that had been published in the Notification under Clause

(b) of sub-section (1) of Section 5 of the Act and that any deviation would be permissible only to the quantum of the Minimum Wages so sought to

be prescribed. Admittance of such interpretation would be narrowing down the power of the Government to exercise its discretion, in bringing out

major changes, in accordance with what has come out in the discussions, either as proposed by the Employer or by the Employee.

7. Looking at the facts of the case and specifically the consultation attempted with the Advisory Board, it is evident that both the Employers and

the Employees had submitted representations and objections to the Government as well as the Advisory Board. The Petitioners do not have a

contention that they were not heard on their objections either by the Government or by the Advisory Board. Nor can such contention be sustained

since a Full Bench of this Court, has, in Malayalam Plantations Limited and Others Vs. State of Kerala and Others, held that no oral hearing is

contemplated on the proposals. Be that as it may, a reading of Ext. P4(g) would clearly indicate that "service weightage" was one of the proposals

which was deliberated upon by the Advisory Board in which deliberations, the representatives of the Employers and the Employees participated.

In such circumstances, it cannot be gainsaid that the provision for "service weightage" in Ext. P5-Notification is bad only for the reason of it having

not figured in the proposal brought out by the Government as per Ext. P2. The proposals are in the nature of broad outline, of the probable

intended changes/Revision and the Government cannot be tied down to the proposals alone. That would be fettering the power of the Government

and rendering the requirement to consider the representations and objections of the affected parties; an useless formality.

8. The very same reasoning would apply to the monthly salary also. It is to be noticed that in Ext. P2, the Managerial Staff were included in the

category of highly skilled workers and in fact there was a provision for monthly salary wherein it was prescribed that the monthly salary of any

category of Workmen shall be the amount fixed for one day multiplied by 26. This was in fact expanded upon in Ext. P5, wherein the managerial

staff were removed from the category of highly skilled workers and was placed in the category of monthly rated workers. While placing them in the

category of monthly rated workers, a separate minimum wage was prescribed for them, on the basis of the monthly remuneration payable to them.

The Government cannot be faulted for doing so, since the original proposal itself included the Managerial Staff. In Ext. P5 they were designated as

a different category and separate wages on a monthly basis was provided for them. At best, a computation was done making the daily wages,

monthly; and a figure arrived at determining the monthly basic wages. This Court is of the opinion that Ext. P5 cannot be assailed on the ground of

the above contention raised by the Petitioners.

9. The next contention is with respect to the disparity between the Employers engaged in a particular industry. It is urged that rubber products, is

an area, wherein the Employers range from multinational Companies, to industries in the small and medium sector and also include individual

entrepreneurs carrying on small units. The learned Senior Counsel places reliance on the decision of this Court in Arimala Clinic Vs. State of

Kerala, to argue that the Government could definitely take into account the dissimilar nature of the units coming under the same classification of

industry, to provide different Minimum Wages, on a reference to the actual work carried on. Arimala Clinic (supra) directed such a course and

when the Government complied with the Judgment, in the case of Hospitals, the same was again a subject of challenge in Kerala Private Hospitals

Associations Vs. Secretary, Labour and Rehabilitation, While upholding the course adopted by the Government, this Court noticed that Section

3(3) of the Act itself envisages the relevant factors to be considered being; difference in scheduled employment, difference in the character of work

in the same scheduled employment and the difference between localities. But though such segregation was held to be proper, if the circumstances

justify it; those were declared to be matters of policy.

10. A Division Bench of this Court in Punchiri Boat Service Ltd., Alleppey and others Vs. State of Travancore-Cochin and others, held that the

difficulty of individual Employers to pay the Minimum Wages prescribed on account of economic conditions of such Employer cannot be a ground

to strike down the law as offending Article 19 of the Constitution of India. It is to be noticed that a Constitution Bench of the Honourable Supreme

Court also in U. Unichoyi and Others Vs. The State of Kerala, considering a challenge to the power conferred under the Act, as being violative of

Article 19(1)(g) found that in fixing the ""minimum wage"" rates as contemplated by the Act the hardship caused to individual Employers or their

inability to meet the burden has no relevance.

11. More than two decades back the Honourable Supreme Court in The Workmen represented by Secretary Vs. The Management of Reptakos

Brett and Co. Ltd. and another, held that the concept of minimum wage is not the same as it was. The Tripartite Committee of the Indian Labour

Conference in 1957 declared five norms to be followed in fixation of ""Minimum Wages"". The norms prescribed were (i). the standard working

class family, (ii). the food and clothing requirements, (iii). necessity of housing and (iv). Miscellaneous expenditure. The Honourable Supreme

Court keeping in view the Socioeconomic aspect of the wage structure introduced an additional component being ""education of children, medical

requirements, recreational facilities and provision for old age"". The broad categorization of wage structure into ''minimum wage'', ''fair wage'', and

''living wage'' has considerably narrowed down in the expanding horizons of right to life being deemed to be right to live with dignity. The rapid

changes that marked the last two decades also dissuades this Court from taking a doctrinaire approach, especially in matters where the welfare

State implements its policies. The difference between locations though recognised as a relevant factor, the insignificance of such a consideration in

the State of Kerala, also cannot be ignored. The provision of ''Minimum Wages'' again cannot be considered as a measure to raise the wages of

every individual worker to that paid by a Multi-National Company. It is the minimum wage, which according to the Government, an individual

requires to carry on his family''s life with dignity, with reference to the nature of work. The responsible Government''s action in exercising statutory

functions, but also apparently touching upon policy, as formulated by the dictates of a welfare legislation, cannot be lightly interfered with, by this

Court, under Article 226 of the Constitution of India.

12. One other contention on Ext. P5 is with respect to the inclusion of Managers and Supervisors for whom also the Minimum Wages has been

prescribed which, the Petitioners contend, is beyond the scope of the powers conferred under the Act for reason only of them being not includable

in the definition of ''Employee'' under the Act. A reading of the definition of "Employee'' would clearly indicate that a Manager or Supervisor would

not come under the definition, nor was it intended that all persons engaged in an Industry, irrespective of the nature of their work, should be

included in the definition. It is also pertinent that sub-clause (iv) of Clause (e) of Section 2 of the Act defines ''Employer'' and includes within its

definition ""any person responsible to the owner for the Supervision and control of the Employees or for the payment of wages"". In such

circumstances, the Government could not have prescribed Minimum Wages for the Managers, as has been done in Ext. P5. With respect to

supervisors the Full Bench decision cited above upheld the prescription of such wages to the Supervisors under the Act. A Counter Affidavit has

been filed by the Government which would indicate that what was intended was to cover ""Managers without administrative and managerial powers

who come within the purview of the Act. It is also admitted that any Manager having managerial, administrative and financial powers does not

come within the purview of the term ''Employee"""". Such a distinction is merely illusory and Managers definitely would not come within the definition

of ''Employee'' as defined under the Act. The provision of ''Minimum Wages'' to Managers in Ext. P5 cannot be enforced by the Government and

to that extent, Ext. P5 would be set aside. However, in all other respects, Ext. P5 is confirmed.

The Writ Petition is partly allowed leaving the parties to suffer their costs.