

(1996) 02 KL CK 0062

High Court Of Kerala

Case No: O.P. No. 1957 of 1996

Association of Planters of Kerala

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Feb. 6, 1996

Acts Referred:

- Minimum Wages Act, 1948 - Section 3, 5, 5(1)

Citation: (1996) 74 FLR 2288 : (1996) 3 ILR (Ker) 451 : (1996) 2 LLJ 267

Hon'ble Judges: P. Shanmugam, J

Bench: Single Bench

Advocate: Anil Divan and Joseph Markose, for the Appellant;

Final Decision: Dismissed

Judgement

P. Shanmugam, J.

The Association of Planters of Kerala and a member of the said Association have filed the Original Petition seeking for a direction to direct the respondent to withdraw Ext, P2 notification dt. November 19, 1995. The said notification is a draft preliminary notification issued under Clause(b) of Sub-section (1) of Section 5 of the Minimum Wages Act, 1948 (for short "the Act). The petitioners have also prayed for a writ of prohibition to prohibit the State Govt. from taking any further steps pursuant to the said notification.

2. The facts of the case briefly stated are as follows: The Govt. of Kerala issued a draft preliminary notification containing proposals regarding the revision of minimum wages payable to the classes of employees employed in Tea, Rubber, Coffee, and Cardamom plantations in the State with effect from April 1, 1995. It is stated that approximately four lakhs of employees were employed in various plantations in Kerala. The last wage revision was made in the year 1985. As per Section 3 of the Act, the appropriate Govt. is required to review the minimum rates of wages at intervals not exceeding five years. Hence, a proposal in the form of

draft preliminary notification dt. November 18, 1995 was issued for the information of all persons who are likely to be affected calling upon them to submit their objection and suggestion on or before January 20, 1996. In pursuance to the said notification, the petitioners have filed their objection on January 16, 1996. The Govt. is yet to issue the final notification. Contending that the said notification suffers from jurisdictional error apparent on the face of the records the above writ petition is filed.

3. Learned Senior counsel appearing on behalf of the petitioners submits that the issuance of Ext. P2 notification in exercise of jurisdiction conferred on the State as a delegate is ultra vires of the provisions of the Act and Rules, arbitrary, unreasonable and against public interest and violative of Articles 14 and 19(1)(g) of the Constitution of India. In reference to Ext. P2 notification he formulates the following objections: viz:

(i) giving retrospective effect from April 1, 1995 to the minimum rates of wages;

(ii) fixation of the minimum rate for over-kilos over and above the standard output and incorporate the same as part of minimum wages;

(iii) fixation of service weightage and job differentials for workers.

4. In support of these contentions he relied on the decisions in [T.P. Sokkalal Ramsait Factory Private Limited Vs. The Government of Madras by the Secretary, Department of Industries, Labour and Housing](#), [Gairkhata Tea Co. v. State of West Bengal AIR 1961 Calcutta 420](#), [Narottamdas Harjiwandas Vs. P.B. Gowarikar, Inspector, Minimum Wages, Assistant Labour Commissioner's Office and Others](#), and [Mahendra Chandra v. State AIR 1971 Tri 32](#) and prays for the relief sought for in the Original Petition. I heard counsel and gone through the decisions.

5. Section 3 of the Act provides for the fixing of minimum rates of wages. Every State Govt. is directed to review the rates that had been fixed at such intervals not exceeding five years. Section 5 of the Act outlines the procedure for fixing and revising minimum wages. Before revising the minimum rates of wages the State Govt. has to by notification publish the proposals (draft preliminary notification) for the information of persons likely to be affected thereby and after considering the objections the State Govt. shall revise the minimum rates of wages (by final notification). The said final notification unless otherwise provides, shall come into force on the expiry of 3 months from the date of its issue.

6. The arguments on behalf of the petitioners is that if the proposals, viz, the draft preliminary notification, proposing to give effect to the revision from April 1, 1995 is approved and a final notification is issued, it would be ultra vires of Section 5 of the Act. Therefore, they are questioning the proposal (draft notification itself) inasmuch as the Govt. cannot propose to revise the minimum rates of wages from an anterior date.

7. The petitioners have filed their objection dt. January 16, 1996 raising all these issues. The Govt. is yet to issue a final notification after considering their objections. Therefore, the challenge to Ext. P2 notification at this stage is premature. None of the decisions cited by Senior Learned Counsel for the petitioners related to the draft notification.

8. The State Govt. had issued final notifications on earlier period on the following dates: January 21, 1965. March 25, 1970/March 20, 1974 July 4, 1981, March 24, 1987, and August 8, 1988. All the above notifications were more or less in compliance with Section 3 of the Act where the intervals of revision of wages did not exceed the period of five years, fixed u/s 3 of the Act. After the last notification dt. August 8, 1988, the present proposal dt, November 18, 1995 is, as a matter of fact long over due. Nearly seven and half years lapsed from the date of last revision. Even the retrospective proposal from April 1, 1995 is reckoned, it would be still exceeding the prescribed period of five years u/s 3 of the Act. The minimum wages that could be revised as per Section 3 read with Section 5 of the Act could be retrospective so as to comply with the minimum period of 5 years. The draft notification u/s 5 proposes a revision from April 1, 1995. Clause(b) of Section 5(1) of the Act does not prohibit the State Govt. to propose a revision from an anterior date. Sub-section (2) of Section 5 stated that the final notification unless otherwise provides, shall come into force on the expiry of three months from the date of its issue. The argument is that the expression otherwise provides would only be referable to days between the date of such final notification and the three months from the date of issue of the final notification. In effect, the submission is that a final notification cannot be issued retrospectively. I am unable to discern any such restriction on the State Government as to giving effect to the notification retrospectively. If such a restriction is given it would be contrary to Section 3 of the Act besides imposing a narrow and strict interpretation on the power of the State Govt. to revise the rates of minimum wages periodically with intervals of 5 years. While Section 3 enables the continuance of the rate of minimum wages until the revision is made it would be reasonable to follow and restore the revision from the date of its expiry.

9. Minimum wages is not contractual but statutory. Failure to fix or revise is not only a statutory violation but is a breach of fundamental right enshrined in Article 23 of the Constitution of India. If a workman is paid less than the minimum wages it can be legitimately presumed that he is acting under the force of some compulsion as he has no choice. The Supreme Court in [People's Union for Democratic Rights and Others Vs. Union of India \(UOI\) and Others](#), held that at (P 470)

"... We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of words "forced labour" under Article 23.

Before leaving this subject, we may point out with all the emphasis at our command that whenever any fundamental right which is enforceable against private individuals such as, for example, a fundamental right enacted in Articles 17 or 23 or 24 is being violated, it is the constitutional obligation of the State to take the necessary steps for the purpose of interdicting such violation and ensuring observance of the fundamental right by the private individual who is transgressing the same".

10. A duty is therefore cast on the State by the provisions of the Act and Article 23 to fix and revise the minimum rate of wages. The continuance of rate of wages fixed from 1993 onwards which would be less than the minimum payable will be illegal and the workers are entitled to the retrospective fixation or revision from the date it is due for revision. Otherwise, Section 3(1)(b) would become meaningless and redundant. In this background if Section 5(2) is read it would make clear that the revision can be related to an anterior date. If not provided it would automatically come into force on the 3rd month of the issue. This is the only purport of the provision. The principle of interpretation of legislation made under power conferred by statute is that it must be construed in the light of the enabling statute generally and particularly in conformity with its substantive provision. An act comes into force normally prospectively unless by express words or by necessary implication it appears that was the intention of the legislature. Statutes of declaratory nature are prima facie retrospective in operation. Applying these principles I find that by express words viz., "otherwise provided" and by necessary implication read with Section 3(1)(b) the State is entitled to revise the minimum rate of wages retrospectively. Fixation and revision of rates of wages and the enabling provisions are declaratory in nature.

11. The Supreme Court in [Ministry of Labour and Rehabilitation and Another Vs. Tiffin's Barytes Asbestos and Paints Ltd. and Another](#), held that the notification fixing minimum wages are not be lightly interfered with under Article 226 of the Constitution of India. In that context Supreme Court held: P 415.

"A notification fixing minimum wages, in a country where wages are already minimal should not be interfered with under Article 226 except on the most substantial of grounds. The Minimum Wages Act is a social welfare legislation undertaken to further the Directive Principles of State Policy and action taken pursuant to it cannot be struck down on mere technicalities".

12. A similar provision viz., Section 17A of the Industrial Disputes Act came up for consideration before the Supreme Court. Sub Section 4 of Section 17A provides for the coming into force of the award from such date as may be specified and where date is so specified it shall come into force either on the expiry of 30 days (Sub-section (1)), or as provided by sub-section i.e., 15 days or ninety days

respectively. The Supreme Court held that u/s 17A(4) it is a matter of discretion for the Tribunal to decide having regard to the circumstances of the case from which date the award should come into operation. The court's interference is called for only when it is unreasonably exercised.

13. In *Mizar Govinda Annappa Pai & Sons v. State of Karnataka* 1986 Lab.I.C.1555 learned Judge of Karnataka High Court has taken the view that power of Govt. u/s 5(2) of the Act to issue notification revising minimum wages includes power to give retrospective effect to notification. According to the said judgment, the scheme of the Act enables the State Govt. to give retrospective effect to the revision of wages. It is also held that if the Govt. has got the powers to issue the notification only with prospective effect, then the rights of the workman for the increased wages consequent on the revision could be denied by procrastination in the deliberation of the committee and the consequential issue of notification. I am in full agreement with this view.

14. All the decisions referred to above on behalf of the petitioners do not go into the scheme of the Act and also do not refer to the requirement of Section 3 which states that a revision shall be made at intervals not exceeding five years. Section 5(2) enables the State Government to give effect to the proposal retrospectively as State Govt. is entitled to "otherwise provided" under the expression to give retrospective effect to the notification.

15. In reference to other point, that is the proposal to fix a minimum rate for over-kilo over and above the standard output, it is admitted that such over-kilo rates are formed part of the minimum wages in the earlier notifications, but they were not included in 1950 and 1971 notifications. If these over-kilos rate have been prescribed in the previous notifications, I do not see any grounds to countenance the argument that it is an incentive and therefore it would not form part of minimum wages. Wages have been defined u/s 2(h) of the Act as to mean 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. Section 4 deals with the composition of minimum rate of wages. Section 17 says that minimum rate wages for piece work shall not be less than minimum time rate. In this context, the decision referred to on behalf of the petitioners, viz., [Manganese Ore \(India\) Ltd. Vs. Chandi Lal Saha and others](#), may not apply to the fact of this case. The point referred related to attendance bonus which was considered as an incentive to secure regular attendance. But we are concerned with minimum rates for over the standard output. Learned Senior counsel submitted that they are objecting only to 1(c) (iii) to Schedule-I. Under this Clause 37 paise per kg for the first 10 kgs. over and above the standard output and 41 paise per kg. for the next 10 kgs. and 47 paise per kg. thereafter. Thus, over and above a particular standard output for the minimum piece rates are granted or are proposed. According to the petitioners this is only an

incentive to bring more crops. Whether it is an incentive or not, a particular rate is fixed over and above the standard output. This cannot be termed as an incentive. It can only be a part of minimum rate wages for the over-kilos.

16. The next point is that the preliminary notification provides for job differential at specified rates for different types of work by introducing service weightage for daily rated and monthly rated workers. No serious arguments are raised to substantiate the point as to how this would not come under the purview of the minimum wages rates. As the petitioners have submitted a detailed objection and suggestion on these aspects, the same being under consideration by the Government it may not be worthwhile to go into the merits of the contentions of the petitioner, in detail at this stage. As the argument mainly rested on the jurisdictional question of the retrospective effect of a notification, the same has been dealt with.

17. Learned Senior counsel referred to a statement of Minister for Labour appearing in "Malayala Manorama" dated November 19, 1995. According to the said report, the Minister has stated that notification has been issued refixing the wages of plantation workers under Minimum Wages Act with effect from April 1, 1995. This could only be reference to the draft notification dated November 18, 1995. From this it could not be inferred that the Govt. had decided even on November 19, 1995 as to give effect to the notification from April 1, 1995. It was only a proposal stage.

18. For the reasons stated above, I find that the Original Petition is not maintainable. The Petitioners having filed their objection are not entitled to pursue the relief to quash the preliminary notification. The Original Petition is premature. I am also of the view that the contention that the proposal to give retrospective effect to the revision of minimum wages is without jurisdiction cannot be accepted for the reasons stated above. Hence, the Original Petition is dismissed.