

(2012) 09 CAL CK 0006

Calcutta High Court

Case No: Writ Petition No. 676 (W) of 2003

Bengal Brickfield Owners"
Association and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Sept. 21, 2012

Acts Referred:

- Customs Act, 1962 - Section 25
- Minimum Wages Act, 1948 - Section 3(1)(b), 5, 5(1)(a), 5(1)(b), 5(2)

Citation: (2013) 1 WBLR 690

Hon'ble Judges: Aniruddha Bose, J

Bench: Single Bench

Advocate: Pradip Kumar Roy, for the Appellant; Ram Anand Agarwala, for the Respondent

Judgement

Aniruddha Bose, J.

This writ petition is directed against a notification issued by the State Government for fixing minimum wages for employees employed in brick manufactories. This notification bearing No. 42-M.W./2W-33/2000 dated 7 May, 2002 has been made Annexure-"P-13" to the writ petition. The notification has been issued in terms of proviso to Section 3(1)(b) of the Minimum Wages Act, 1948. Also under challenge in this proceeding is the legality of a notification dated 22 February, 2001 bearing No. 25-MW/2W-33/2000, which was published in the Calcutta Gazette on 20 March, 2001 issued under the said statute containing proposal for revising the rates of wages of said categories of employees. The latter notification contains proposal for fixation of such rates whereas the former, notification has been issued fixing the rates under the provisions of Section 5(1)(b) read with Section 5(2) of the Act. The grounds of challenge are twofold. A notification for fixing minimum wages for the same category of employees dated 12 November, 1997 was challenged by the petitioners earlier by filing a writ petition, which was registered as WP No. 24439 (W) of 1998. This writ petition was disposed of by an Hon'ble Single Judge of this Court on 12

March 1999 with the following directions:--

The notification dated November 12, 1997, having been issued by the concerned authority without giving any hearing to the writ petitioners, the same cannot be sustained in law and as such the same is hereby set aside. Mr. Patranabis, appearing for the State, submits that hearing should be given to the petitioners and for that purpose asked for time for two months to conclude such proceedings. In view of that there will be an order directing the concerned authorities to give a hearing to the writ petitioners and to pass a reasoned order in the matter within a period of eight weeks from the date of communication of this order. Till such consideration is effected by the concerned authority the petitioners shall go on paying on the basis of tripartite settlement and/or arrangement entered into between the parties. It is however made clear that I have not gone into the merits of the case and the petitioners will be at liberty to place all the documents if any in support of their submissions.

This writ application is thus disposed of without any order as to costs.

2. The admitted position is that after the aforesaid order was passed, the petitioners, who claim to be the representative body of the brickfield owners of this State were heard by the Secretary of the Labour Department, Government of West Bengal on 7 November 2000. An order was passed on 8 November, 2000. A copy of this order was made available in course of hearing in which it has been, inter alia, recorded:--

5. It was contended by the petitioners before me that as Minimum Wages Act provides two alternative methods of finalisation of the minimum wage structure, they would prefer the first alternative mentioned u/s 5 (1) (a) under which a preliminary report is to be prepared by a committee appointed by the Government. However, the State Government has already adopted the second procedure provided u/s. 5(1)(b) stipulates that a preliminary notification be issued, representations etc, be considered by the Minimum Wage Advisory Committee thereafter and a final notification issued subsequent to this. Either all these procedures can serve the needs of justice adequately provided, as has been observed by the Hon"ble High Court, the concerned authorities give a hearing to the writ petitioners and pass a reasoned order. It is clear from this order that the concerned authorities in this instance would be either the Minimum Wages Advisory Board or the body working under the direction and supervision of this Board as the Act provides that the State Government would be acting on the recommendations of the Minimum Wage Advisory Board. Therefore, it appears to me it would be possible to issue a fresh preliminary notification and after allowing for enough time for all concerned to file representations, etc. this can be examined under the supervision of the Minimum Wage Advisory Board and the latter body would also deliberate and decide the matter in sufficient detail so that its proceedings would form a part of the record of deliberations on the basis of which the final notification may be issued.

6. For the present, therefore, the Department should issue a fresh preliminary notification u/s 5 and the time for filing of representations etc. may be limited to 4 weeks after the date of issue of notification. Further action thereafter may be taken as outlined in the foregoing paragraphs.

3. This order, however, was not communicated to the petitioners. Instead, a fresh notification containing proposal for fixing the rates was published on 22 February, 2001, to which I have referred to in the earlier part of this judgment. After publication of the same, the notification for fixing the minimum wages was published on 7th May, 2002.

4. Contention of the petitioners is that the notification in the form of proposal was not forwarded to them, which according to the petitioners was the earlier practice and in the absence of service of either the final order or the subsequent proposal in the form of a notification, they were deprived of their right to represent their case before the concerned authorities. The right to receive the fresh proposal, according to the petitioners, crystallized from the order of this Court passed on 12 March, 1999.

5. The other point urged on behalf of the petitioners is that there was a tripartite industry wide settlement for fixing the rates of wages of similarly situated employees and hence it was open to the respondents to re-fix minimum wages by taking recourse to the provisions of the Minimum Wages Act, 1948. In course of hearing before me, however, primarily argument on being deprived of adequate opportunity of hearing and not being informed of the reasons has been pressed on behalf of the petitioners.

6. I had directed production of records in this matter. On behalf of the respondents, an order passed by the Secretary of the Department, N.K.S. Jhala signed on 8 November 2000 was produced. Although it forms part of the records, the order does not appear to have been properly corrected, as there are several hand-written corrections on the order. The order is without any caption or sub-heading. To this Court, it seems that this was a draft order, which was signed and there was no corrected fair copy of the order. But there is no stipulation in law that a fair copy of an order is required to be made. An order with overwritings and corrections would also be a valid order, if it originates from a proper authority and contains the signature of such authority. No material, however, has been produced by the State to establish that this order, or copy thereof was served upon the petitioners. This order does not seem to have been circulated at all.

7. I am of the view that by failing to communicate the order to the petitioners there was a default on the part of the State-respondents. When the Court directs an authority to pass an order upon giving the complainants or the persons at whose instance such order is passed an opportunity of hearing, it is implicit that such order ought to be communicated to such persons or individuals. Unless such

communication is specifically excluded. Just because specific direction is not given for communicating the order, an order cannot be kept hidden away from public view. But will this defect in this case invalidate the subsequent notifications? In the statute, the provision or procedure for fixing or revising minimum wages is contained in Section 5 of the Act. This provision stipulates:--

S. 5. Procedure for fixing and revising minimum wages.-- (1) in fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed the appropriate Government shall either-

(a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be, or

(b) by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date not less than two months from the date of the notification, on which the proposals will be taken into consideration.

(2) After considering the advice of the committee or committees appointed under clause (a) of sub-section(1), or as the case may be, all representations received by it before the date specified in the notification under clause (b) of that sub-section, the appropriate Government shall, by notification in the Official Gazette, fix, or, as the case may be, revise the minimum rates of wages in respect of each scheduled employment, and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of issue:

Provided that where the appropriate Government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1), the appropriate Government shall consult the Advisory Board also.

8. Fixing of the minimum wages essentially is an executive exercise. The statute provides communication of the proposal through Official Gazette. There is no substantive provision for giving independent opportunity of hearing to any class of persons by issuing notice to them separately. In the instant case, the right of the petitioners to have opportunity of hearing accrued under the order of this Court passed on 12 March, 1999. After the hearing took place the order remained with the authorities, not being communicated to the petitioners, nor being circulated in any other form. A fresh proposal was published in the Official Gazette, which was in tune with the unpublished order of the Secretary of the Labour Department, Government of West Bengal. Thus, though the petitioners were not communicated the said order, they had the opportunity to make representations against the proposal when the same was published in the Official Gazette. The complaint of the petitioners on this count is that the said gazette was not made available to them. In the judgment of the Supreme Court in the case of [Union of India and Others Vs. M/s. Ganesh Das](#)

[Bhojraj](#), dealing with the question of publication of a notification under the Customs Act, individual communication of the Gazette Notifications have not been found to be the condition precedent for giving effect to such notification. In this judgment it has been held:--

17. From the aforesaid observations, it is plain and clear that the decision in B.K. Srinivasan also reiterates that the notification will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette. We also agree with the reasons recorded in Mayer Hans George and hold that notification u/s 25 of the Customs Act would come into operation as soon as it is published in the Official Gazette and no further publication is required. Hence, the decision rendered in Pankaj Jain Agencies represents the correct exposition of law on the subject. The decision rendered in New Tobacco Co. followed in Garware Nylons Ltd. does not lay down the correct law.

9. Thus, in this case the petitioners' grievance for not being communicated the order largely stood redressed to by publication of the rates of wages in the notification dated 22nd February 2001, which contained draft proposal, followed by the final notification dated 7 May, 2002.

10. After hearing was concluded in terms of the earlier order of this Court, no substantive finding was given by the Secretary of the Labour Department, Government of West Bengal but the State Government had issued a fresh proposal which was published in the Official Gazette. The Act does not stipulate disclosure of reasons for proposing fixing or revision of wage rates. In such circumstances, when hearing is given in pursuance of direction of the Court and the order passed in such hearing is not published, but the entire issue is placed on the statutory track in the form of publication of proposal in a notification, then the defect originating from failure to effect service of the order on the petitioners get cured. The object of communicating an order is to apprise the recipient thereof the impact of the order or course of events which is to follow such order, so that the recipient can take appropriate steps in relation to such course of events. In the instant case, after hearing the petitioners, the entire issue was placed before the public at large, as there was fresh proposal to which the general public could respond to. Though in my opinion proper step in this matter would have been to communicate the said order to the petitioners, for the reasons discussed in this judgment, I am not inclined to invalidate the entire set of events which occurred subsequent to passing of that order. The defect in approach of the respondents in this case was not a fatal defect.

11. Fixing of minimum wages, as I have observed earlier, is essentially an executive act, on the strength of a beneficial legislation and judicial interference in such actions ought to be minimal.

12. Mr. Roy, learned Counsel for the petitioners had referred to three often quoted judgments of the Supreme Court in the cases of [Olga Tellis and Others Vs. Bombay Municipal Corporation and Others](#) , [Dinesh Trivedi, M.P. and Others Vs. Union of India \(UOI\) and Others](#), and [Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others](#), in support of his submissions that all actions of the State should satisfy the test of reasonableness and survive judicial scrutiny on that ground. But so far as fixing of minimum wages is concerned, if the statutory provisions are adhered to, which have been done in the instant case, the Court can interfere only in case outstanding irrationality in fixation of such rates is established. I do not find that any case of such outstanding irrationality or unreasonableness has been made out by the petitioners.

13. The writ petition accordingly fails.

14. All interim orders, if any, shall stand vacated.

15. There shall, however, be no order as to costs. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.