
(1992) 06 KL CK 0019
In the High Court Of Kerala
Case No : O.P. No. 1190 of 1988

Achuthan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 24-06-1992

Acts Referred:

Constitution of India, 1950 — Article 14
Minimum Wages Act, 1948 — Section 5

Citation : (1992) 65 FLR 830 : (1995) 3 LLJ 136

Hon'ble Judges : Sreedharan, J

Bench : Single Bench

Advocate : C.K. Sivasankara Panicker, for the Appellant; V.K. Beeran, A.A.G., M.K. Damodaran and Ashok M. Cherian, for the Respondent

Final Decision : Allowed

Judgement

Sreedharan, J.—Petitioners, three in number, challenge the validity of Ext.P1 notification issued by Government fixing minimum rates of wages payable to employees engaged in Cinema Theatres within the State. Petitioners 1 and 2 are owners of Cinema Theatres and 3rd petitioner is an Association of exhibitors of Cinematograph films, either owned by them in proprietary or partnership concerns or on hire. It is averred that the third petitioner has a membership of 1370 out of total 1400 Cinema Theatres in Kerala.

2. Government of Kerala as per notification dated 21.7.1984 issued u/s 27 of the Minimum Wages Act, hereinafter referred to as "the Act" , added "Employment in Cinema Theatres" to the Schedule to the Act. Thereafter they appointed a Committee to hold enquiries to advise it in respect of the fixation of minimum rates of wages in respect of the employees in the Theatres. Committee was constituted by 11 persons representing the employees, 11 persons representing the employers and 3 independent members. One among the independent members was appointed chairman. That Committee submitted report dated 22.10.1987. On the basis of that report, Government issued Ext. P1 notification,

G.O. (Rt.) 1810/87/LBR, dated 3.12.1987 fixing the minimum rates of wages payable to the employees engaged in Cinema Theatres in the State. This notification is challenged on three counts.

(i) Composition of the Committee was against Section 9 of the Act in so far as it did not contain equal number of persons to represent the employers as those nominated to represent the employees;

(ii) Government did not consider any of the representations submitted by the owners of the Cinema Theatres before issuing Exhibit P1 notification;

(iii) All Cinema Theatres situated within the State of Kerala were treated similarly and this has resulted in violation of the principles contained in Article 14 of the Constitution of India.

I shall proceed to deal with these contentions in detail.

3. Section 5 read with Section 9 of the Act enables the Government to appoint a Committee to hold enquiries for advising it for the fixation of minimum rates of wages in respect of a schedule employment. The Committee shall consist of persons to be nominated by the Government representing the employers and employees in the scheduled employment, who shall be equal in number. In the instant case, the Committee was constituted by nominating 11 representatives of the employees and 11 others to represent the employers. It is the petitioners' case that out of those nominated to represent the employers, 1st and 2nd were Managers of Theatres and 4th was representing the association of film distributors. It is their further case that persons ranked 5 and 8 had no connection whatsoever with the Cinema business. Lastly it was contended that the 3rd, 7th, 9th, 10th and 11th nominees were individual proprietors of Cinema Theatres and hence they cannot be considered as persons interested in the industry. On this basis, it was argued that the composition of the Committee was not in terms with the provisions of the Act.

4. It is true that Nos. 1 and 2 among the nominees representing the management were Managers of Theatres. Managers are appointed by the owners of Theatres to conduct the day-to-day business in the Theatre. They are directly involved in running the Cinema Theatres. They are the representatives of the employers present at the theatre. They are intimately connected with the problems of the employees. Such persons can never be considered as having no nexus with the conduct of business in the Theatre. In the film industry, film distributors play a vital role. Distributors and their representatives can never be considered as persons representing the interest of the employees in Cinema Theatres. They are intimately connected with the employers, who are running the Theatres. Their nomination can never be considered to be against the interest of the employers. Individual owners of Theatres, are interested in safeguarding the rights of the owners of Cinema Theatres. I do not find my way to describe them as persons not concerned with the interest of the employers running Cinema Theatres. The contention that persons ranked 5 and 8 among

the nominated members are having no connection whatsoever with the conduct of the business of running Cinema Theatres is not substantiated by any acceptable material. On the ipse-dixit of the petitioners, I am not in a position to hold that persons named as 5th and 8th are not connected with the film industry. Materials placed before Court go to show that 11 persons were nominated By the Government to represent the interest of the employers. It is strictly in compliance with the provision contained in Section 9 of the Act. Further, even if there was some irregularity in the constitution of the committee and that irregularity has not gone to affect the working of the committee materially or has gone to the prejudice of the interest of the employers. In such a situation, this Court is not to interfere with the notification fixing the minimum wages under Article 226 of the Constitution of India, (vide Ministry of Labour and Rehabilitation and Another Vs. Tiffin's Barytes Asbestos and Paints Ltd. and Another, Thus I overrule the first contention raised by the learned counsel representing the petitioners.

5. Section 5 of the Act lays down the procedure for fixing and revising minimum wages. It enables the State Government to resort to two procedures. The first one is for the Government to appoint as many Committees and Sub-Committees to hold enquiries and to advise it in respect of the fixation or revision of the minimum rates of wages. The second course is by issuing a notification in the Official Gazette of the proposal for the information of persons likely to be affected thereby and specify a date, on which the proposal will be taken into consideration. It states that two months' time should be given to persons likely to be affected to put forward their representations. If the Government are resorting to the first of the above mentioned two courses, it appears from the Section, Government are not to consider the individual representations submitted by the employers or the employees. All points that are to be raised by the employer and the employee are to be considered by the Committee. Committee will have to go deep into all aspects relating to fixation of minimum rates of wages and to advise Government in respect of such fixation. When the committee after considering the entire aspects submits its report, it is not necessary for the Government to consider representations submitted by the employers or the employees separately. Consideration of such representation is called for only when the second of the above mentioned two courses is adopted for the fixation of the minimum rates of wages. In the instant case, Government adopted the first procedure by constituting a Committee to go into all aspects to advise it after holding enquiries. The Committee went into all aspects of the matter before filing Exhibit P2 report. Government, after receipt of Exhibit, P2 report, was not bound to consider any of the representation put in by the petitioners. So, I do not find any vice in Exhibit P1 notification on the ground that before issuing it Government did not consider Exts. P4 to P6, P8 and P9 representations. Thus the second contention raised by the petitioners is also overruled.

6. Government fixed minimum wages to the employees engaged in Cinema

Theatres throughout the State at the same rate. Government fixed uniform rates of minimum wages to the employees working in different regions. Before the Committee, representatives of the employers canvassed for classification of Cinema Theatres into three groups and to fix minimum wages of the employees at three different rates. This request of the employers was turned down by the Committee holding that the principle of equal pay for equal work should be implemented. This approach made by the Committee, which was accepted by the Government while issuing Ext. P1 notification, according to petitioners, is arbitrary and violative of Article 14 of the Constitution. A Theatre situated in a city like Thiruvananthapuram, Ernakulam or Kozhi-kode is not to be treated alike as one situated in the hilly areas of Wynad or Idukki districts. The Theatres in the hilly areas are not having the same facilities and customers. The gate collection in those theatres are meagre when compared with that in a theatre in the cities. The theatres in hilly areas are running only one show a day. An employee, say a Booking Clerk, in such a theatre needs work only for half an hour or at the maximum one hour a day and that too after dusk. A Booking Clerk in a theatre in the cities, where four shows are exhibited, will have to be engaged throughout the day. In this state of affairs, a Booking Clerk in the Cinema Theatre in the hilly areas cannot be treated similarly like his counterpart in a Cinema Theatre in the city. In Ext.P1 notification, Booking Clerks, as a class, are to be paid at the same rate of wages. This is clearly arbitrary. The Government ought to have fixed different rates of minimum wages for different regions. Fixation of a uniform rate for the whole State was not based on any intelligent differentia. Hence the notification is violative of the provisions of Article 14 of the Constitution.

7. Kerala Cinemas (Regulation) Act, 1958 and the Rules framed thereunder recognises various types of Cinema Theatres. They are "permanent Cinemas" and "temporary Cinemas". Permanent Cinemas are installed in permanent buildings, which are constructed with R.C.C. Columns or Steel Columns, rubble or brick walls, R.C.C. balcony, iron tresses and roof of A.C. or G.I. or R.C.C., including buildings which are air-conditioned. Temporary Cinemas are run in temporary buildings, which are not permanent. Different rates of fees are fixed as licence fee for temporary theatres and permanent theatres. Capacity of the employer, who runs permanent theatre, will certainly vary from the financial capacity of the owner of a temporary theatre. They are not to be treated alike. The owner of a temporary theatre situated in the hilly areas of the State cannot be treated alike with the owner of a permanent theatre situated in cities. Their capacity to pay the wages will differ. By no stretch of imagination can they be treated alike.

8. While issuing Ext.P1 notification Government did not consider the capacity of the owners of Cinema Theatres situated in different regions of the State. In fixing wages and dearness allowance, the legal position is well established that it has to be done on industry-cum-region basis having due regard to the financial capacity of the employer. Government was clearly in error in treating Cinema Theatres situated in various regions of the State similarly. The capacity of the employer in

different regions to pay the wages differs. Nature of the work of the employees in the theatres in different regions varies. This aspect was also lost the sight of while issuing Ext. P1 notification. This has resulted in treating unequals as equals. Consequently, it has resulted in violation of the equality provision contained in Article 14 of the Constitution. Article 14 is the antithesis of arbitrariness. When it is found that Ext. P1 has been issued in violation of the provisions contained in Article 14, it has to be held that the said notification has been issued arbitrarily. At this stage, reference can be made to Harbans Lal v. State of Himachal Pradesh : 1989 (I) LLJ 466.

9. The Committee constituted by the Government for fixing the minimum wages declined the request of the industry to classify Cinema Theatres into different groups, on the ground that principle of equal pay for equal work must be made applicable to the industry. This approach, I am afraid, is not reasonable. Article 14 of the Constitution permits reasonable classification founded on rational basis. Therefore, it is permissible to provide different pay scales in the same cadre of employment on the basis of the region in which the theatre is situated. In Ministry of Labour and Rehabilitation and Another Vs. Tiffin's Barytes Asbestos and Paints Ltd. and Another, the Court took the view that the principle of equal pay for equal work cannot be invoked invariably in every kind of service particularly in area of professional services. It was also held that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the post concerned. If the classification has reasonable nexus with the objective sought to be achieved, the State would be justified in prescribing different pay scales. As I stated earlier, the Cinema Theatres situated in hilly areas of the State cannot be treated similarly with those situated in Cities and Municipalities. The employees engaged in the theatres in different regions are placed in different situations and they are not to be treated similarly relying on the principle that equal pay must be paid for equal work.

10. The Supreme Court in Ministry of Labour and Rehabilitation and Another Vs. Tiffin's Barytes Asbestos and Paints Ltd. and Another, observed that a notification fixing minimum wages, in a country where wages are already minimal, should not be interfered with under Article 226 of the Constitution except on most substantial grounds. This observation, according to me, applies on all fours to the facts of this case. Since the fixation of minimum wages in the instant case has been made in an arbitrary manner, which has resulted in substantial illegality, I have no hesitation in quashing the same. I do so.

In the result, Original petition is allowed and Exhibit P1 notification fixing the minimum rates of wages to the employees engaged in Cinema Theatres in the State is quashed.