

(2016) 10 KAR CK 0014

In the Karnataka High Court

Case No : Writ Petition Nos. 56099-56184 of 2015 (L-Res)

Akshara Motors Pvt. Ltd.

APPELLANT

Vs

Secretary Labour Department

RESPONDENT

Date of Decision : 28-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Minimum Wages Act, 1948 — Section 5

Citation : (2017) 1 AirKarR 770 : (2017) LIC 1272

Hon'ble Judges : A.N. Venugopala Gowda, J.

Bench : Single Bench

Advocate : Sri. S.N. Murthy, Senior Advocate for M/s S.N. Murthy Associates, for the Petitioner No. 1 in Writ Petition Nos. 56099-56184 of 2015; Sri. S.N. Murthy, Senior Advocate for Sri Somashekar, Advocate, for the Petitioner Nos. 2 and 86 in Writ Petition Nos. 56

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—Common questions of facts and law arise for consideration in these petitions which were heard together and shall stand disposed of by this Common Order.

2. These petitions have been filed by the employer(s), challenging the Notification(s) of the Government of Karnataka, issued in exercise of the power under Section 3(1)(b) and Section 5(1)(b) of the Minimum Wages Act, 1948 (for short, "the Act"), revising the rates of minimum wages with respect to scheduled employments, with effect from 01.04.2015.

3. The respondents are the Government of Karnataka in whose name the impugned Notification(s) have been issued and published and the Trade Unions which espoused the cause of employees/sweated labour employed by the petitioners and other employers in the State of Karnataka.

4. The material facts and events which have given rise to these petitions are:

that the revision of minimum wages in respect of the scheduled employments in the Automobile Engineering (including service and repair), Foundry, Hospitals, Oil Mills, Printing Press, Ceramics, Stoneware, Pottery Works and Veneer industries in the State of Karnataka having been made on 02.03.2009 and the revision having become due, draft Notification(s) were published on 30.10.2014. Advisory Committee constituted on 05.01.2015 submitted a report dated 27.05.2015. State Government issued the impugned Notification(s) on 30.07.2015 in respect of Automobile Engineering and Veneer industries, and on 03.08.2015 i.e., in respect of the aforesaid other industries.

5. In W.P. Nos. 56099-184/2015 filed by M/s. Akshara Motors Pvt. Ltd. and others, interim stay of implementation of the impugned Notification was ordered subject to the condition that the petitioner shall pay 75% of the amount specified for different categories with prospective effect i.e., from the date of the Notification. Ad interim stay of the impugned Notification(s) was ordered in the connected writ petitions, subject to the same condition.

6. The Minimum Wages Act, 1948 was enacted by the Parliament to provide for fixing minimum rates of wages in certain employments. Section 2 gives the definitions of various expressions appearing in the Act. Clauses (e), (h) and (i) give the meaning of the words "employer", "wages" and "employee" respectively. Section 3 provides for fixing of the minimum rates of wages by the appropriate Government and to review at certain intervals.

7. Section 5 of the Act reads thus:

"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 subcommittees 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 its 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."

(Underlining is mine for emphasis)

Thus it is clear, that Section 5 of the Act provides the procedure for fixing and/or revising the minimum wages in respect of any scheduled employment. There are two types of procedure indicated in clauses (a) and (b) of subsection (1). In the present cases, the procedure followed was one provided under clause (b) of sub-section (1).

8. Section 7 of the Act pertains to constitution of Advisory Board and reads thus:

"7. Advisory Board.-For the purpose of co-ordinating the work of committees and subcommittees appointed under section 5 and advising the appropriate Government generally in the matter of fixing and revising minimum rates of wages, the appropriate Government shall appoint an Advisory board."

(Underlining is mine for emphasis)

Thus, it is clear that the Advisory Board can tender advice which is not binding on the Government while fixing the wages or revising the same as the case may be. However, the Government can take into consideration and act on the report of the Advisory Board. But, the Government is not bound to accept the report, as it is, which becomes clear from the ratio of law laid down by the Apex Court in the cases of *State of Andhra Pradesh v. Narayana Velur Beedi Manufacturing Factory*, reported in (1973) 4 SCC 178 and *State of Rajasthan v. Hari Ram Nathwani*, reported in (1975) 2 SCC 517.

9. In the case of *Ministry of Labour and Rehabilitation and another v. Tiffin's Barytes Asbestos and Paints Ltd. and another*, reported in (1985) 3 SCC 594, Apex Court has held that the Notification fixing minimum wages is not to be lightly interfered with under Article 226 of the Constitution of India on the ground of some irregularity in constitution of the Committee or in the procedure adopted by the Committee. It has been so stated on account of the fact that the Committee acts only as a re-commendatory body and the final Notification fixing/revising wages has to be made by the appropriate Government. It has been further held as follows:

"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 the most substantial of grounds. The legislation 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."

10. Battery of learned Senior Advocates and also learned advocates on record of

the cases made extensive submissions and cited large number of decisions in support of their respective contentions. In view of the legal flaw noticed at the end of hearing of the arguments of the learned advocates, rendering the impugned Notifications invalid and vitiated, it is unnecessary to notice the rival contentions and record findings thereon.

11. Perused the files of the State Government which led to the issuance of the impugned Notification(s). The question that arises for consideration is, whether a substantial ground exists to strike down the impugned Notification(s)?

12. The facts not in dispute are, that the previous revision of minimum wages for the scheduled employments in respect of the Industry to which the petitioners belong was made on 02.03.2009. Section 3(1)(b) of the Act empowers appropriate Government to review at such intervals, as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates, if necessary. The proviso makes clear that, if, for any reason the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employments within any interval of five years, nothing contained in the clause shall be deemed to prevent the appropriate Government from reviewing the minimum rates after the expiry of the said period of five years and revising them, if necessary, and until they are so revised, the minimum rates in force immediately before the expiry of the said period of five years shall continue in force. It is appropriate to point out that in the case of *Mangalore Ganesh Beedi and Allied Beedi Factories Workers Association v. State of Karnataka and others* (2003) 5 Kant LJ 26 (DB), it has been held, that power has been conferred on the State Government under Section 5(2) of the Act to make a Notification revising the wages with retrospective effect.

13. In the present cases, draft Notification (s) proposing the revision of minimum rates of wages of the scheduled employments was published on 30.10.2014. None of the petitioners have raised any objection(s) nor made any suggestion(s). State Government constituted the Advisory Committee on 05.01.2015. The Committee having held meetings submitted its report dated 27.05.2015 to the State Government. With reference to the said proceedings, the Notifications, impugned in these petitions were issued on 30.07.2015 and on 03.08.2015 and published in the Gazette.

14. In view of the mandate of sub-section (2) of Section 5 of the Act, what falls for determination is, whether the impugned Notifications are invalid and vitiated by any legal flaw?

15. A careful reading of sub-section (2) of Section 5 leaves no manner of doubt that the power to fix and/or revise the minimum rates of wages in respect of each of the scheduled employments is of the appropriate Government i.e., by following the procedure given under sub-section (1) of Section 5 of the Act.

16. In the present cases, after receipt of the Advisory" Committee report, the

file(s) having been processed by the Secretariat of Labour Department, were not put up to the Minister concerned for consideration and decision. Learned Government Advocate was unable to show either the approval of the note(s) put up by the Secretary, Labour Department by the Minister concerned or the decision having been taken by the State Government. Perusal of the files produced by the learned Government Advocate does not show the consideration of the report of the Advisory Committee and decision having been taken by the Minister/Government, to revise/fix the minimum rates of wages of the scheduled employments and the consequential issue and publication of the Notifications.

17. The impugned Notifications have been issued and published in the name of the Karnataka Government merely on the basis of the files as processed by the Labour Department, without there being any decision by the Government. The power having been vested under Sections 3 and 5 of the Act with the appropriate Government, the exercise of the power other than by the designated authority viz., appropriate Government would amount to such other authority clutching at the jurisdiction of the designated authority and such action is a nullity in the eyes of law. It is trite that if a statute vests the jurisdiction in an authority, only such authority can exercise the power and not by any other.

18. Section 5 of the Act having vested the power in the appropriate Government to fix/revise the minimum rates of wages in the scheduled employments, in the present cases, has not been exercised by the statutory authority. Hence, the issuance and publication of the Notifications, impugned in these petitions, are invalid and ultra vires the provisions of the Act.

19. In the case of Commissioner of Police, Bombay v. Gordhandas Bhanji, reported in AIR 1952 SC 16, where the Commissioner of Police had at the behest of the State Government cancelled the permission granted for construction of a cinema in Greater Bombay, the order passed by the Commissioner was quashed on the ground that the authority concerned had vested the power to cancel in the Commissioner alone who was bound to exercise the same himself and bring to bear on the matter his own independent and unfettered Judgment.

20. There being no dispute that sub-section (2) of Section 5 of the Act is mandatory and that there being violation, in that, the decision to revise/fix the minimum rates of wages having not been arrived at by the appropriate Government, the act of issuance and publication of the Notifications dated 30.07.2015 and 03.08.2015, impugned in these petitions, are ultra vires of the provisions of the Act.

21. Before concluding, it is appropriate to observe, that on account of the glaring lapse on the part of the officials and officers concerned in the Labour Department, interest of thousands of sweated employees is getting affected. The process of revision itself having been undertaken beyond the period stipulated in Section 3 of the Act, there will be further delay in the matter of revision of the minimum rates of wages to the sweated labour only because of the legal flaw

noticed supra, which is clearly on account of the carelessness/negligence in not placing the files before the Minister concerned for consideration and decision. The glaring lapse on the part of the officers/officials of the Labour Department in the Secretariat has resulted in further delay of the revision and fixation of minimum rates of wages of the sweated employees. The gravity of the lapse disclosed in these cases is such as would call for an immediate inquiry by Chief Secretary, Government of Karnataka and imposition of appropriate penalty on all the delinquent officials/officers.

In the result, these petitions are allowed and the impugned Notifications dated 30.07.2015 and 03.08.2015 fixing/revising the minimum rates of wages of the scheduled employments of the industries to which the petitioners belong are quashed, with the following directions:

(i) The Government shall consider the Advisory Committee's report and revise/fix the minimum rates of wages with expedition and in any event, before 30.11.2016 and publish the Notification on or before that date, in the interest of thousands of workmen whose day-to-day necessities of life has been kept in view by the Parliament while enacting the Minimum Wages Act, 1948.

(ii) Till such time, the petitioners in all these cases shall continue to pay 75% of the wages to their respective employees in the scheduled employments, subject to the adjustment against the wages to be revised/fixed under fresh Notification by the Government.

(iii) There being glaring lapse and gross dereliction of duty on the part of the officials/officers of the Labour Department in the Secretariat, the Chief Secretary to the Government shall conduct an inquiry, and appropriately penalise the officials/officers concerned. The action taken shall be reported to this Court on or before 31.12.2016.

Parties to bear their respective costs.