

(1961) 12 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Application No. 56 of 1958

Anandmal and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 08-12-1961

Acts Referred:

Minimum Wages Act, 1948 — Section 26, 27, 3(1)
States Reorganisation Act, 1956 — Section 119, 120, 125, 2

Citation : AIR 1962 Raj 218 : (1962) RLW 301

Hon'ble Judges : L.N. Chhangani, J; I.N. Modi, J

Bench : Division Bench

Advocate : M.B.L. Bhargava, for the Appellant; Kansingh, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Modi, J.—This writ application by Anandmal and another under Article 226 of the Constitution is directed against a notification No. 9/2/56-Lab. dated the 10th July, 1957, issued by the Government of Rajasthan u/s 3 read with Section 5 of the Minimum Wages Act, 1948, (Act No. XI of 1948) (hereinafter called the Act) by which certain minimum piece rates of wages with respect to employment in Gota Kinari establishment as specified in Schedules A to F appended to this notification were enforced in the Ajmer area, that is, the area which comprised the State of Ajmer immediately before the 1st November, 1956, and it is prayed that this notification be quashed as being illegal and discriminatory.

2. The petitioners are the proprietors of a Gota factory in Moti Katra, Ajmer. It is common ground between the parties that by a notification No. 9/2/56-Lab. dated the 11th July, 1956 (Ex. 1) published in the Gazette of India, Section III, dated the 21st July, 1956, the Chief Commissioner, Ajmer, acting u/s 27 of the Act directed that at item No. 16 of Part I of the Schedule to the Act "Employment in Gota Kinari Establishment" be added, with the result that the Schedule in its application to the Ajmer State as it then was, must be deemed to have been

amended accordingly with effect from the date of the notification.

It is further common ground that by another notification No. 9/2/56-Lab. dated the 6th September, 1956 (Ex. 2) issued under Clause (a) of Sub-section (1) of Section 5 of the Act, the Chief Commissioner appointed a Committee to hold an inquiry and advise him in respect of the fixation of minimum wages in the employment in Gota Kinari Establishment in that State and the Committee was directed to submit its report within two months from the date of this order. It is not disputed that the term of this Committee was extended from time to time until it submitted its report on the 31st May, 1957. Thereafter by a notification of the 10th July, 1957 (Ex. 3), to which we have referred above and which is impugned before us, the Governor of the State of Rajasthan, fixed the minimum piece rates of wages as specified in the six Schedules appended to the notification for the area which constituted the State of Ajmer immediately before the 1st day of November, 1956, and which since that date became part and parcel of the State of Rajasthan as it was constituted under the States Reorganisation Act (No. 37 of 1956), and as it exists today.

3. It may be pointed out at this place that it is a fact and is no longer disputed, though it was controverted in the petitioners' application (see paragraph seven thereof) that by a notification No. F. 1 (6) Lab./56/10267 dated the 31st October, 1956 issued by the Secretary to the Government in the Labour Department by order of His Highness the Rajpramukh of the State of Rajasthan, as it then was u/s 27 of the Act, employment in Gota industry was also added to part I of the schedule to the Act. The position therefore, at the time the impugned notification was issued indisputably was that employment in Gota industry had become a scheduled employment under the Act (being in Part I of the Schedule) throughout Rajasthan. By the notification which is questioned before us, minimum wages for those employed in the Gota industry, however, came to be fixed for, what we may, for the sake of facility of reference, call only the Ajmer area of the present State of Rajasthan, and no similar action for those employed elsewhere in the same industry in this State has yet been taken, though it is obvious that employment in the said industry also stood incorporated in Part I of the Schedule of the Act as early as the 31st October, 1956, in the remaining part of the State.

4. It is in these circumstances that the petitioners challenge the validity of the aforesaid notification of 1957 as illegal and unconstitutional. The grounds of attack against this notification are four in number:

1. The notifications dated the 11th July, 1956, and the 6th September, 1956, referred to above issued by the Chief Commissioner of the former State of Ajmer became wholly inoperative and were of no legal consequence on the integration of that State with the State of Rajasthan, and, therefore, these could not have been used as a basis by the Governor for issuing the impugned notification of 1957.

2. The Governor of Rajasthan was not competent to issue the notification of 1957 for the Ajmer area and such power vested only in the Central Government u/s 120 of the States Reorganisation Act of 1956.

3. The fixation of minimum wages for the employment or industry in question for the Ajmer area alone after the former Ajmer State had been integrated with the present State of Rajasthan was violative of the provisions of Section 3 of the Act and was, therefore, utterly illegal.

4. The notification of 1957 was also violative of Article 14 of the Constitution, inasmuch as there were in existence Gota Kinari establishments in other places in Rajasthan such as Jaipur, Jodhpur, Pali, Kandala, Sarwar, and several other places, and the fixation of minimum piece rates of wages in the case of this employment in this industry only in the Ajmer area placed the proprietors of this industry in that area on a disadvantageous footing as compared with those who carried on this industry in other places in this State and that this offended against the principle of equality before law enshrined in Article 14 of the Constitution and must, therefore, be struck down as discriminatory.

5. The application has been opposed on behalf of the State.

6. We shall consider each one of the above mentioned grounds ad seriatim.

7. Re (1): A complete answer is furnished to this ground by Section 125 of the States Reorganisation Act of 1956. This section, in so far as it is material for our recent purposes, reads as follows:

"125. Provisions as to certain pending proceedings: 1. Every proceeding pending immediately before the appointed day before a court (other than a High Court), tribunal, authority or officer in any area which on that day falls within a State shall if it is a proceeding relating exclusively to any part of the territories which as from that day are the territories of another State stand transferred to the corresponding court, tribunal, authority or officer in the other State.

2.

3. In this section -

(a) "proceeding" includes any suit, case or appeal

By Section 2 (a) of the States Reorganisation Act, "appointed day" has been defined as the 1st day of November, 1956. The combined effect of these provisions to our mind, clearly is that whatever proceeding was pending on the eve of the 1st November, 1956, before the authorities concerned in the then existing State of Ajmer stood transferred to the corresponding authorities in the reorganised State of Rajasthan of which the Ajmer State had become part and parcel with effect from the 1st November, 1956. It clearly follows, therefore, that the notifications of July 11 and September 6, 1956, were kept alive and they were as effective as before and they were capable of being used as a base for such further action as might be legally necessary. There is, therefore, no force in

this contention and we hereby overrule it.

8. Re. (2). The argument is that the State of Ajmer, being a Part C State under the Constitution, the appropriate Government within the meaning of Section 120 of the States Reorganisation Act, 1956, for the purpose of facilitating the application of any law in relation to that State up to one year from the 1st November, 1956, was not the Rajasthan Government but the Central Government. Our attention was specially invited in this connection to the Explanation to Section 120 which reads as follows:

"Explanation--In this section, the expression "appropriate Government" means -

(a) as respects any law relating to a matter enumerated in the Union List, the Central Government; and

(b) as respects any other law -

(i) in its application to a Part A State, the State Government, and

(ii) in its application to a Part C State, the Central Government."

We have carefully considered this contention and have clearly come to the conclusion that it is fallacious and has no force. We shall assume for the purposes of this argument that the impugned notification of 1957 was issued in pursuance of or in application of the notification of July 11, 1956, which amounted to law. It may be noted in this connection that the expression "law" has been defined by Clause (h) of Section 2 of the States Reorganisation Act, 1956, as including any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having the force of law in the whole or any part of the territory of India. The fallacy underlying this argument, however, is the notion that, assuming that Section 120(b) of the States Reorganisation Act was attracted into application in the present case the former Ajmer State was still a Part C State as it originally was before its integration with the reorganised State of Rajasthan, and, therefore, (apart of course from the State Legislature) it was the Central Government only which could issue the notification of 1957, which was well within one year of the 1st November, 1956, and that the Government of the Rajasthan State had no authority to do so.

We should like to invite attention in this connection to the position that the expressions "Part A State" and "Part C State" as used in the Explanation to Section 120 must be read with reference to Section 12 of the States Reorganisation Act which lays down that for Part A, Part B and Part C as mentioned in the First Schedule to the Constitution, the parts mentioned in the section shall be substituted. The relevant part of the section for us to note is that in Part A as mentioned in the section, the State of Rajasthan appears at item No. 11, and its territories are mentioned as those specified in Section 10 of the States Reorganisation Act, 1956. Now Section 10 sets out the content of the new Rajasthan State and lays down that, as from the appointed day, that is, the 1st November, 1956, there shall be formed a new Part A State to be known as the

State of Rajasthan comprising, inter alia, the territories of the existing State of Ajmer.

It also deserves to be pointed out here that after the States Reorganisation Act had received the assent of the President on the 31st August, 1956, the Constitution (Seventh Amendment) Act, 1956, had been brought into force on the 1st day of November, 1956, which was also the appointed day under the States Reorganisation Act, 1956, and by Section 2 of this Act for the First Schedule to the Constitution as amended by the States Reorganisation Act, 1956, and the Bihar and West Bengal (Transfer of Territories) Act, 1956, the Schedule as mentioned thereunder was Substituted and according to this schedule, the nomenclature of Part A, Part B and Part C States was entirely dispensed with, and the territories of the Union of India were divided into only two categories; (1) the States and (2) the Union Territories, and the State of Rajasthan appears at serial No. 11 in this schedule and comprises the territories specified in Section 10 of the States Reorganisation Act, 1956, so that the former State of Ajmer became part of the re-organised State of Rajasthan.

9. The point to note is that with effect from the 1st November, 1956, the then "existing State of Ajmer" was no longer a separate, Part C State, as it was before, but was part and parcel of the Part A State of Rajasthan within the meaning of the Explanation to Section 120 of the States Reorganisation Act, or, to put it slightly differently, became part of what must be called the State of Rajasthan without more under the Constitution as amended, and, therefore, the appropriate Government in relation to the area of the erstwhile State of Ajmer for the purposes of Section 120 of the States Reorganisation Act was the Government of the reorganised State of Rajasthan and not the Central Government.

10. The result of the discussion is that the competent, modifying or adapting Government for the purposes of facilitating the application of or amending any law in relation to the territories of the newly formed State of Rajasthan, within the meaning of Section 120, was the Government of the reorganised State of Rajasthan, and that would be the correct legal position with respect to the former State of Ajmer, which, though at one time was a Part C State, had become part and parcel of the State of Rajasthan and it cannot possibly be accepted that the Central Government was the appropriate Government qua the Ajmer area by virtue of anything contained in Section 120 of the States Reorganisation Act, 1956. Consequently, we have no hesitation in coming to the conclusion that the contention that the Rajasthan Government was not competent to issue the notification of 1957, in the sense discussed above, has no substance and we must reject it.

11. Re. (3) : The contention under this head; put in plain language, is that granting that the Governor of Rajasthan was competent to issue the notification of 1957 fixing the minimum wages for the employees in the Gota industry for the Ajmer area. Section 3 of the Act requires that such a notification to be valid must

have been issued so as to fix wages for the same kind of employment throughout the State, and the fixation of wages for any particular part of the State, such as the Ajmer area, was a clear breach of the provisions of Section 3 of the Act. Section 3, in so far as it is material for our present purposes, reads as follows:

"3. Fixing of minimum rates of wages --1. The appropriate Government shall, in the manner hereinafter provided -

(a) fix the minimum rates of wages payable to employees employed -

(i) in an employment specified in Part I of the Schedule at the commencement of this Act, before the 31st day of December, 1959;

(ii) in an employment specified in Part II of the Schedule at the commencement of this Act, before the 31st day of December, 1959:

Provided that the appropriate Government may, instead of fixing minimum rate of wages under this sub-clause for the whole State, fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof; and

(iii) in an employment added to Part I or Part II of the Schedule by notification u/s 27, before the expiry of one year from the date of the notification."

We may as well quote Section 27 here:

"27. Power of appropriate Government to add to Schedule. The appropriate Government after giving by notification in the Official Gazette not less than three months" notice of its intention so to do, may, by like notification, add to either Part of the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act, and thereupon the Schedule shall in its application to the State be deemed to be amended accordingly."

There is one more section namely Section 26 which we may usefully quote in this context.

"26. Exemptions and exceptions.

1. The appropriate Government may subject to such conditions if any as it may think fit to impose direct that the provisions of this Act shall not apply in relation to the wages payable to disabled employees.

2. The appropriate Government may, if for special reasons it thinks so fit, by notification in the Official Gazette, direct that subject to such conditions and for such period as it may specify the provisions of this Act or any of them shall not apply to all or any class of employees employed in any scheduled employment or to any locality where there is carried on a scheduled employment.

2A. The appropriate Government may if it is of opinion that having regard to the terms and conditions of service applicable to any class of employees in a

scheduled employment generally or in a scheduled employment in a local area or to any establishment or a part of any establishment in a scheduled employment it is not necessary to fix minimum wages in respect of such employees of that class or in respect of employees in such establishment or such part of any establishment as are in receipt of wages exceeding such limit as may be prescribed in this behalf direct, by notification in the Official Gazette and subject to such conditions, if any as it may think fit to impose that the provisions of this Act or any of them shall not apply in relation to such employees.

3. Nothing in this Act shall apply, to the wages payable by an employer to a member of his family dependent on him.

Explanation.--In this sub-section a member of the employers' family shall be deemed to include his or her spouse or child or parent or brother or sister."

A careful analysis of the aforementioned provisions shows that the Act provides for fixation by appropriate Government of minimum wages for employments covered by the Schedule to the Act, and for this purpose, scheduled employments have been divided into two classes, Part I and Part II. Part II deals with employments in agriculture whereas Part I with other employments. It appears that originally when the Act was brought into force, a longer period was allowed for fixation of minimum wages for agricultural labour, the reason being that greater administrative difficulties were bound to be experienced in the fixation of wages for such labour. But this distinction has not been maintained in Section 3 as it now exists and uniform period upto 31st December, 1959 has been provided in the case of employments mentioned in Part I and Part II of the schedule as it existed at the commencement of the Act.

But a proviso has been added in the case of employments specified in Part II, the effect of which is that the Government has been given the enabling power to fix minimum wages for such employments in a part of the State or to fix them for certain specified classes of a particular employment falling within the category for the whole State or for a part of it. It is remarkable that no such discretion has been allowed to the Government in the case of employments falling within Part I of the Schedule. Then by Section 27, provision is made for adding to employments contained in either of these two parts.

What we, therefore, desire to emphasize is that, according to the scheme of Section 3 in the case of fixation of minimum wages for employments specified in Part II of the Schedule at the commencement of the Act or in the case Of employments which are subsequently added thereto u/s 27 of the Act, provision has been made that the Appropriate Government may fix such wages with respect to them for the whole State or for only a part thereof or for a limited class of any such employment; whereas no such provision exists in regard to the employments which stood incorporated in Part I of the Schedule at the commencement of the Act or which may be subsequently added thereto u/s 27 of the Act. This unmistakably leads to the conclusion that where minimum wages

are envisaged to be fixed by the appropriate Government in relation to any employments specified in Part I of the Schedule, as it originally was, at the commencement of the Act, or to any Which may be later added to it u/s 27, such wages must be fixed for that class of employment throughout the State.

The only exceptions to this general rule are provided u/s 26 which, broadly speaking lays down (1) that it would be open to the appropriate Government to direct that the provisions of this Act would not apply in the case of wages payable to disabled employees; (2) that the Government may, for special reasons restrict the application of the minimum wages fixed by it to any locality or to any class of employees employed in a scheduled employment or (3) that the Government may direct that the wages fixed by it for any scheduled employment will not apply in the case of persons who may be in receipt of wages exceeding the prescribed limit. But the important point is that where the Government considers it necessary so to restrict the fixation of minimum wages to any class of employees employed in any scheduled employment or to restrict the same to any locality where the same employment is carried out, such employment falling within Part I of the Schedule, then it is empowered to do so only for special and specific reasons by issuing a notification to that effect in the official gazette. But where no special reasons are shown to exist and no such notification is issued restricting the fixation of minimum wages to any particular locality or any particular class of scheduled employment within the meaning of Section 26 the scheme of the Act, to our mind, seems to be clear enough that such fixation must be done in the lease of an employment falling within Part I of the Schedule throughout the State or not at all.

It is not the case of the respondent State that when it fixed the minimum wages for the employment in question in the Ajmer area only it was acting under the provisions of Section 26 of the Act, nor was any notification rendering such a course necessary issued by the Government. The learned Government Advocate, however, endeavoured hard to meet this objection by placing his reliance on Section 119 of the States Reorganisation Act, 1956. Section 119 reads as follows;

"Territorial extent of laws.

The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to an existing State shall until otherwise provided by a competent" Legislature or other competent authority be construed as meaning the territories within that State immediately before the appointed day."

Now, Part II referred to in this section relates to the territorial changes and formation of new States which were brought about by the States Reorganisation Act. This section in simple language means that the territorial extent of the existing laws shall remain intact notwithstanding the provisions of Part II of the States Reorganisation Act Until a different provision is made by a competent

Legislature or other competent authority. The provisions would be clearly attracted into application where different sets of Laws may be in force in different States which were brought under integration under the States Reorganisation Act. This section, in our opinion, can hardly have any application in the case of a Central Act which was in force throughout the Indian Union, as the Act with which we are concerned was.

We may also point out that before the 1st November, 1956, both the pre-existing States of Ajmer and Rajasthan had amended the schedule so as to incorporate in Part I thereof the employment in the Gota industry or establishment with the result that the law was the same in this regard throughout the reorganised State of Rajasthan and no such question of any restricted application of a particular law to a particular part of the new State as contra-distinguished from its other parts, where it did not exist, arose or could arise. In other words, the territorial extent of the Schedule as it stood amended on the 1st November, 1956, was identically the same throughout the length and breadth of the re-constituted State of Rajasthan under the States Reorganisation Act. That being so, we are entirely unable to see how anything contained in Section 119 of the aforesaid Act can help the respondent State.

12. The further argument which was advanced by the learned Government Advocate in this connection is that in the case of the Ajmer area the State Government was under a duty to fix the minimum wages before the expiry of one year from the date of the notification, (Ex. 1), dated the 11th July, 1956, and therefore, if it did take consequential administrative action and laid down such wages for that area in pursuance of the mandate contained in Section 3(1)(a)(iii) no fault can really be found with that and its action was perfectly legal. The argument is attractive but does not appear to us to be sound. For, once the reorganised State of Rajasthan was formed, including the territories of the former State of Ajmer as defined by the States Reorganisation Act, and there was hardly any occasion for the application of different kinds of laws being in force in the two sets of territories on the date of the formation of the new State in the case before us the full force and effect of the entire provisions of Section 3 came into play.

And as we understand the underlying scheme of this section, it lays down in the case of employments falling within Part I of the Schedule a two-fold requirement namely first that minimum wages must have been fixed by or before the 31st December, 1959 where such employment was incorporated in Part I of the Schedule at the time of the commencement of the Act or where such employment may be subsequently added thereto, then within one year of the incorporation of the particular employment within this part and secondly that such fixation of wages must be prescribed for the whole State except where the State Government finds it necessary to act under the exceptional provisions of Section 26 of the Act which, admittedly was not the case here. It seems to us that both these conditions are cumulative and not disjunctive and that the

fulfilment of only one of them in this class of cases would not be sufficient to satisfy the mandatory requirements of Section 3 of the Act.

It must follow, therefore, that in order to satisfy the essential requirements of Section 3 in the present case the State Government should not merely have fixed the minimum wages within one year of the inclusion of the employment in question in Part I of the Schedule which it did in the case of the Ajmer area but it must speaking generally, have fixed them for the whole of the State and for not merely a part of it and then and then only the legal requirements of Section 3 would stand satisfied and not otherwise and inasmuch as one of the two essential requirements as discussed above is obviously not fulfilled in the present case, the fixation has to be held as being in breach of the essential requirements of Section 3 and therefore bad.

13. Again, we should like to point out that there was no lawful impediment in the way of the State Government to have taken the necessary steps for taking like action in this regard in the rest of Rajasthan also. As we have already pointed out, a notification including the employment in Gota industry in Part I of the Schedule had been issued on the 31st October, 1956, by the Government of the Rajasthan State, as it then was and it had more or less nine months upto the 10th July 1957 when the impugned notification of 1957 came to be issued within which to take the necessary steps for the fixation of the minimum wages for the employment in question throughout the whole State of Rajasthan besides Ajmer and no reasons have been shown to us for failure to take any such action. We may also make it clear even at the risk of repetition that the State Government failed to issue any notification within the meaning of Section 26 of the Act which makes provision for a limited application of minimum wages with reference to a particular locality or a particular class of employees employed in any scheduled employment. The conclusion is, therefore, irresistible that the notification of 1957 which is impugned before us in so far as it applies only to the Ajmer area within the present State falls foul of one of the essential requirements of Section 3 and is therefore, illegal.

14. Summing up the whole position, it boils down to something like this. The present is not a case where different laws were in force in different parts of the State which came to be integrated with each other as a result of the reorganisation of States, and, therefore, Sections 119 and 120 of the States Reorganisation Act can have no application and that according to the scheme of Section 3 of the Act of 1948 the fixation of wages in the case of any employment in Part I of the Schedule could not but be done except for the whole State unless a different course was rendered necessary within the meaning of Section 26 of the Act, and it is not the case of the respondent State that the action taken by it was taken in pursuance of the provisions of Section 26, and therefore, the notification of 1957 which is impugned before us was violative of one of the essential requirements of Section 3 and consequently it has to be struck down as illegal. We hold accordingly. We are sorry to have to come to this conclusion but

we think that there is hardly any escape from it in law.

15. Re: (4) As we have come to a firm conclusion on the last mentioned ground of attack that it must prevail we consider it unnecessary to deal with and make any definite pronouncement on the fourth ground and there this aspect of the case must rest, so far as the present case is concerned.

16. For the reasons mentioned above, we allow this application and hold that the notification issued by the State dated the 19th July, 1957 fixing certain minimum piece rates of wages for employees in the Gota industry in the Ajmer area of this State, is illegal and direct that no effect shall be given to it. In all the circumstances of the case we would leave the parties to bear their own costs of this writ application.