

**(1996) 06 KL CK 0043**

**In the High Court Of Kerala**

**Case No : O.P. No's. 4982, 6132 etc. of 1990**

Arimala Clinic

APPELLANT

Vs

State of Kerala

RESPONDENT

**Date of Decision : 18-06-1996**

**Acts Referred:**

Minimum Wages Act, 1948 — Section 3(1), 3(3)

**Citation : (1996) 74 FLR 2470 : (1997) 1 LLJ 124**

**Hon'ble Judges : K.P. Dandapani, J**

**Bench : Single Bench**

**Advocate : Kurian Joseph, Jose J. Matheikal and N. Sukumaran, for the Appellant; M.K. Damodran, A.G., for the Respondent**

**Final Decision : Allowed**

## Judgement

K.P. Dandapani, J.—A similar question arises in all these cases and, therefore, these cases are being disposed of by this common judgment.

2. Petitioners in these cases are private hospitals. In all the cases, the challenge is against notification G.O.Rt. No. 1055/90/LBR dt. April 25, 1990 fixing the minimum rate of wages payable to the employees employed in the hospitals, dispensaries and pharmacies in the State, effecting from May 1, 1990.

3. Ext.P1 notification in O.P. No.7029/90 (The said notification is produced in other cases as well) is in supersession of earlier fixation of minimum wages as per G.O. Ms. 94/80/LBR dt. September 8, 1980. As a prelude to review the wages fixed in 1980, Government published orders as per notification No. G.O. Rt. 229/89/ LBR dt. January 31, 1989 as contemplated by Clause (b) of Sub-section (1) of Section 5 of the Minimum Wages Act, 1948 (for short "the Act"). All the petitioners are stated to have objected to those proposals either individually or through their association.

4. The main objections, as can be seen from different original petitions, are that:

(i) Government has fixed a uniform pattern of wages irrespective of whether the hospital or dispensaries are situated in rural or urban areas or whether the establishments are small or big;

(ii) The rates are on the high side and fixation itself is irrational and unreasonable, and

(iii) The fixation is made on the advice of a committee which does not have a representative of either the employee or the employer.

The petitioners contend that the Government, without considering any of these aspects, published a notification in the year 1990 fixing a higher rate than the 1989 proposal.

5. Heard learned counsel for the petitioners and learned Advocate General for the State.

6. As far as the grievance of the non-inclusion of the representative of the employer and employee in the Minimum Wages Advisory Committee, it is submitted and admitted by both sides that the Government itself have constituted a committee in 1993 consisting of the representatives. Therefore, the grievance of the petitioners in that regard stands redressed.

7. Even otherwise, a successful challenge on the above will not lie in view of the decision of the Division Bench of this Court in *Jayachandran v. State of Kerala* 1984 KLT 903. The said portion dealing with the point may be usefully extracted below:

"There is no warrant for the contention that employer or every item included in the Schedule to the Act should have represented in the Minimum Wages Advisory Board".

8. The contention regarding the constitution of the committee cannot be accepted in another aspect as well. This Court in its decision in *Achuthan v. State of Kerala* 1992 (2) KLT 189 has held thus:

"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."

9. Hence petitioners limited their contention to mainly one aspect that employment in private hospitals, dispensaries, pharmacies in the State is a sector which need a classification both with regard to the location of the establishment in ru-raland urban areas and with regard to the size of the establishment, small or big.

10. Section 3(1)(a) of the Act 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 in an employment specified in Part I or Part II of the Schedule and in an employment added to either part by notification u/s 27.

Provided that the appropriate Government may in respect of employees employed in an employment specified in Part II of the Schedule, instead of fixing minimum rates of wages under this 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."

Further Section 3(3) of the Act reads as follows:

"(3) In fixing or revising minimum rates of wages under this Section, -

(a) different minimum rates of wages may be fixed for-

(i) different scheduled employment;

(ii) different classes of work in the same scheduled employment;

(iii) adults, adolescents, children and apprentices;

(iv) different localities;"

11. It is, therefore, contended that the statute itself contemplates such a classification; as otherwise, it would amount to a situation where unequal s being treated equally. In other words, it is a situation, where classification is imperative and the absence of classification tantamounts to violation of Article 14 of the Constitution.

12. In support of the above contention, learned senior counsel Shri. Kurian Joseph, on behalf of the petitioners, rested his arguments mainly on the following decisions: In the decision in West Coast Employers" Federation Willingdon Island and Others Vs. State of Kerala and Others, this court has held:

"There is nothing wrong in taking into consideration circumstances such as the prevailing rate of wages in a particular area, that the industry in that area is a small scale industry, that the market price of the articles manufactured in that area is less than the market price of the articles manufactured in other areas, and that the area has a rural set up, where the only scope for alternative employment is agriculture, whereas the other areas are industrial centres, for fixing lower wage rates for the particular area:"

13. In the decision reported in Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another, the Supreme Court has held thus:

"The contention that the Government has no power to fix different minimum wages for different industries or in different localities is no more available in view of the decision of this court in Bhikusa Yamasa Kahatriya Vs. Sangamner Akola

Taluka Bidi Kamgar Union, . The fixation of minimum wages depends on the prevailing economic conditions, the cost of living in a place, the nature of the work to be performed and the conditions in which the work is performed. The contention that it was impermissible for the Government to divide the State into several zones is opposed to Section 3(3) as well as to the scheme of the Act."

In a case where the Government has fixed minimum wages to cinema theaters without taking into account the types of theatres, this Court in the decision cited *supra*, (Achuthan 's Case) has held thus:

"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 viola-tive of the provisions of Article 14 of the Constitution."

14. According to the learned counsel, the principles enunciated in the above decision apply on all fours to the facts of this case. Evidently, there are small dispensaries without any modern facility with one or two rooms and situated in rural areas. There are small hospitals with 5 to 15 beds, there are hospitals with 1000 or more beds and hospitals with super speciality fa- cilities in urban area. It will be irrational to group together all these establishments into one class since obviously nature of duties of employees vary very much depending on the size of the establishment. Apparently, the above aspects have not been considered by the Government while issuing 1990 notification. From what is stated above, according to me, it is a situation which needs consideration by the Government at the first instance.

15. Shri. M.K.Damodaran, learned Advocate General, submitted that the Advisory Committee under the Act has since been reconstituted as per G.O. (Rt.) No. 2709/93/LBR dt.October 22, 1993 wherein the representatives of the employees and employers are also included. Learned Advocate General further submitted that Government have no objection to consider the whole issue afresh in view of the constitution of the new committee. This submission is recorded.

16. Under the above circumstances, the original petitions are allowed and notification G.O, Rt. No. 1055/90/LBR dt. April 25, 1990 is quashed. Government is directed to consider the entire issue and take a decision afresh, in the matter of fixing the minimum wages as required under the Act, in accordance with law, taking note of what is stated above and after consulting the Advisory Committee constituted under the Government Order dt. October 22, 1993. This shall be done within a period of 4 months from the date of receipt of a copy of this judgement. Pending final decision by the Government, the orders of stay passed by this court shall continue provided the petitioners pay the employees a total sum of Rs. 100/- more than the salary the employees were recieving on May 1, 1990, subject to the result of the decision that may be arrived at by the Government, as directed above.