

(2006) 08 RAJ CK 0077
In the Rajasthan High Court

Associated Stone Industries (Kotah) Ltd.	APPELLANT
Vs	
Union of India (UOI) and Another	RESPONDENT

Date of Decision : 24-08-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Mines Act, 1952 — Section 21, 3
Minimum Wages Act, 1948 — Section 3, 4, 5

Citation : (2007) 3 LLJ 275 : (2007) 2 RLW 1602

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—Challenge in this petition is to Clause (iii) of para 7 of the Explanation in Notification No. 514 (E) dated July 12, 1994 issued by the Government of India, Ministry of Labour in purported exercise of powers conferred by Section 3(i)(b) read with Section 4(1)(iii) and 5(2) of the Minimum Wages Act, 1948 (for short "1948 Act")- Sum and substance of the contentions raised in the writ petition is that the inclusion sought to be made was impermissible in the back ground of what has been stated in the Mines Act, the Mines Rules and other pieces of legislation dealing with mining activities. The relevant portion of the Notification reads thus:

Explanation for the purpose of Notification:

7. A person working or employed in or in connection with a mine is said to be working or employed "below ground" if he is working or employed:

- (i) in a shaft which has been or is in the course of being sunk; or
- (ii) in any excavation which extends below superjacent ground; or
- (iii) in an open cast working in which the depth of the excavation measured from its highest to its lowest point exceeds six metres.

2. It is averred in the writ petition that while there can be no objection to sub-
paras (i) and (ii) above, as being person working or employed below ground, yet
there exists no valid reason or basis for treating a person working or employed in
an open cast working in which the depth of the excavation measured from its
highest to its lowest point exceeds six metres" or employed below ground. It is
further stated that under various Mines Laws, the word "open cast working has
been defined for example under the Mines Act, 1952, the definition of the open
cast working has been given in Section 21(kk) as follows:

Open cast working means a quarry that is to say, an excavation where any
operation for the purpose of searching for or obtaining minerals has been or is
being carried on, not being a shaft or an excavation, which extends below super-
jacent ground:

Thus, working in any open cast mine without any limitation as to its depth,
subject to the working not extending below restricted to open cast workings and
for working in underground mines unrestricted certificate or competency from
the Director of Mines safety is required. It is thus submitted that a Mine remains
an open cast (restricted type) irrespective of the depth of its workings. The Mines
Rules provide for maintaining a separate register in form "C" for workers working
in underground mines. Such a register is not required to be maintained for
workers working in open cast mines. It is further submitted that the Mineral
Conservation and Development Rules under Mineral Development and
Conservation Act categorically state there under in Rule 17 the method of mining
to be followed for open cast mines and underground mines operations
respectively. It is thus stated that it can be seen from the Mines Act; Mines
Rules; Indian Metalliferous Mines Regulations, Mineral Conservation and
Development Rules and Labour Legislation that differentiation is maintained
between the working conditions of workers in open cast (irrespective of depth
and underground mines. It is therefore, submitted that there is no rationale in
treating workers working 6 metres below the top as being at par with workers of
underground mines. It is averred that the attempt by the respondent to merge
two categories of employees together by providing an explanation to the
notification is wholly violative of Article 14 of the Constitution of India, inasmuch
as an attempt has been made to make two unequals equals.

3. The respondents did not file reply to the writ petition but orally urged that no
ground exists for quashing the impugned Notification. Reliance is placed on
Radhey Shyam and Others Vs. Kalyan Mal, wherein the Hon"ble Supreme Court
propounded that the Notification fixing minimum wages are not to be lightly
interfered with under Article 226 except on the most substantial grounds.

4. Learned Senior counsel appearing for the petitioner contended that the
fixation of minimum daily wage rate in open cast mines based upon "depth of
excavation" does not fall nor fits into any of the categories in Section 3(3)(a) of
the Minimum Wages Act. The classes of work must in the context of the statute
mean and include unskilled, semi-skilled and skilled etc. as given in part 1 and

Part II of the Schedule. The learned Counsel further urged that the impugned Notification in para I purports to create two separate categories of minimum rate of wages i.e. "above ground" and "below ground" yet in effect by providing explanation in para 7(iii) thereof in effect it has at the same time attempted to obliterate its basic distinction which had by itself sought to create in the impugned Notification. It is further contended that there exists no reasonable nexus, far less perceptible in law for a fixation of 6 metres of depth in an open cast mine for granting of higher rate of wage. If that be so it is also possible to increase the rate of wages for every successive 6 metres depth or even fraction thereof, and making the matter complicated. In fact such distinction is also not possible in a factory where machines are working at different levels or elevations. This by itself would indicate that an element of unguided inclusion of arbitrariness or of discrimination has entered into the impugned notification thereby affecting Article 14 of the Constitution of India.

5. I have pondered over the rival submissions.

6. A look at the impugned notification demonstrates that certain proposals to revise the minimum rates of wages payable to the categories of employees employed in the scheduled employments in Stone mines and other mines were published as required by Section 5(1)(b) of 1948 Act, in the Gazette of India dated June 11, 1993 for information of and inviting objections and suggestions from all persons likely to be affected thereby till the expiry of the period of two months. Considering the objections and suggestions so received, the Central Government in exercise of powers conferred by Sections 3 (i)(b), 4(i)(iii) and 5(2) of 1948 Act, in supersession of earlier notification dated October 25, 1988 and after consulting the Advisory Board revised the minimum rate of wages payable to the employees employed in the scheduled employments of Stone Mines and other mines.

7. Having closely analysed the submissions advanced on behalf of the petitioner I find that in this case legal issues are intertwined with those involving determination of policy and plethora of technical issues. If workers working 6 meters below the top and the workers of underground mines are treated at par, in my opinion it cannot be said that two categories of employees had been merged together. Workers working 6 meters below or underground are the workers of mines and they cannot be divided into two categories. It is well settled that courts have to be very wary and must exercise their jurisdiction with circumspection for they must not transgress into the realm of policy making, unless the policy is inconsistent with the Constitution and the laws. In *State of Orissa and Others Vs. Gopinath Dash and Others*, their Lordships of the Supreme Court indicated thus:

(Para 7)

The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In

matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown courts will have no occasion to interfere and the court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the court cannot interfere even if a second view is possible from that of the Government.

8. We find no merit in the contention that the impugned part (iii) of para 7 of the Explanation, violates fundamental rights of the petitioner. In my opinion the notification dated July 12, 1994 is founded on the policy decision of the Central Government. The policy introduced through this Notification is not inconsistent with the constitution of India and the relevant laws.

9. In *Ministry of Labour & Rehabilitation v. Tiffin's Barytes Asbestos and Paints Ltd.* (supra) Three Judge Bench of Hon''ble Supreme Court indicated thus:

(Para 3)

...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. At this juncture it would be worthwhile to mention that High Court of Orissa quashed para 7(iii) taking the view that the authority issuing the notification lacked source of statutory power to incorporate such explanation. The Apex Court in *Union of India (UOI) and Others Vs. Essel Mining and Industries Ltd. and Another*, set aside the judgment of Orissa High Court holding that the reasons stated in the judgment to justify its conclusion were confusing and make little sense. The matter was remanded to the High Court to rehear the writ petition and dispose of the same by a reasoned order.

11. Since policy decision introduced by the Central Government through impugned Notification was uniformly applied to all the mines of the country it cannot be termed as unreasonable, irrational, arbitrary or unfair. I am, therefore, of the view that the Central Government was justified in issuing the notification dated July 12, 1994. Impugned part iii of para 7 of the Explanation neither violates constitution of India nor other laws.

12. Resultantly the writ petition, being devoid of merit, stands dismissed without any order as to costs.