

(1961) 02 GUJ CK 0011

In the Gujarat High Court

Case No : Special Civil Application No. 209A of 1960

Chandulal Mohanlal

APPELLANT

Vs

State of Bombay and Others

RESPONDENT

Date of Decision : 27-02-1961

Acts Referred:

Constitution of India, 1950 — Article 14
Minimum Wages Act, 1948 — Section 3(1), 5(1)

Citation : AIR 1961 Guj 184 : (1961) 2 GLR 514 : (1961) 2 GLR 422

Hon'ble Judges : S.T. Desai, C.J; Bhagwati, J

Bench : Division Bench

Advocate : I.M. Nanavaty and B.A. Kayastha, for the Appellant; J.M. Thakore, General and B.R. Sompura, Asstt. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Desai, C.J.—This petition relates to a concern employing five workmen and the matter by itself would seem to be unimportant, but the question involved, -- one under the Minimum Wages Act--affects a number of merchants similarly situated and the petitioner has presented this petition as a test case. The petitioner is a merchant carrying on business in Ahmeclabad in cotton waste and yarn-He has rented a go down in the compound of a ginning and pressing factory and in that compound he gets the work of cleaning cotton done by engaging about five employees. He purchases waste from textile mills and the waste is sorted out in his go down for impurities like "kitti", dirt, oil, etc. The employees clear the waste of impurities and also sort out different kinds of waste-A number of merchants, it appears, any on similar business, but it is not clear whether they also have rented go downs in the compound of other ginning and pressing factories, as done by the petitioner. The Modus Operandi followed by the petitioner is that after the waste is cleared and sorted, out, he sells it to Other merchants. A Notification issued by the Government of Bombay dated 18th April, 1959; and to which we shall presently turn, is challenged by the petitioner on this petition. It is necessary in this resume of facts to refer to an earlier

Notification on which, also considerable reliance has been placed by the petitioner.

2. On 31st January, 1955, a Notification, was issued by the State of Bombay in accordance with the provisions of Section 5(1)(a) of the Minimum Wages Act, 1948. On the advice the Committee appointed to hold enquiries and advise the State Government in fixing the minimum rates of wages in respect of the employment in any cotton ginning or cotton pressing manufactory, the State Government fixed the minimum wages in respect of various zones in the State and in respect of the various types of workmen and also various classes of workmen, and having regard to the nature of work done by them. All that was shown in the Schedule to that Notification. Four zones there shown related to different areas in the State. The type of work done by workmen was divided into three heads of Skilled, Semi-skilled and Unskilled workmen. There were two classes of Unskilled workmen, "viz., those doing light work and those doing heavy work. Under the heading of employees belonging to the class of Unskilled workmen doing light work was the entry "Employees employed on picking and cleaning of Kapas". Ahmedabad is in zone II of that Schedule and the salary of such employees for a month of twenty-six days is shown there as Rs. 36-10-0. There was an amendment in that Notification made on 31st July, 1959 and by the amendment, the word "employees employed on picking and cleaning of Kapas" were substituted by the words "employee employed on picking and cleaning raw or ginned cotton".

3. On 18th April, 1959, the State Government promulgated another Notification and that was done under the advice of the Committee to hold enquiries and advise the State Government in fixing minimum rates of wages in respect of employment in any shop or commercial establishment other than that covered under any of other entries in the Schedule to the Act. Section 3 of the Minimum Wages Act empowers the State Government inter alia to fix the minimum rates of wages payable to employees employed in an employment specified in part one of the Schedule. The Schedule, as it originally stood, enumerated employments. Section 27 of that Act lays down the power of the State Government to add to the Schedule. To the twelve employments mentioned in the Schedule, were added four more by a Notification dated 10-12-57 u/s 27. The expression "scheduled employment" is defined in the Act to mean an employment specified in the Schedule or a processor branch of work forming part of such employment. Considerable argument urged before us on behalf of the petitioner has revolved on the Schedule to which four employments were added, and it will be convenient therefore to set out here the Schedule with the additions to the same in extenso.

THE SCHEDULE (See sections 2(a) and 27) PART I.

1. Employment in any woollen carpet making Or shawl weaving establishment.
2. Employment in any rice mill, flour mill or dall mill.
3. Employment in any tobacco (including bidi making) manufactory.

4. Employment in any plantation, that is to say, any estate which is maintained for the purpose of growing cinchona, rubber, tea or coffee.
5. Employment in any oil mill.
6. Employment under any local authority. 7. Employment on the construction or maintenance of roads or in building operations.
8. Employment in stone breaking or stone crushing.
9. Employment in any local manufactory.
10. Employment in any mica works.
11. Employment in public motor transport.
12. Employment in tanneries and leather manufactory.
13. Employment in any cotton ginning or cotton pressing manufactory. Notification 1954 P. IV A p. 223.
14. Employment in any industry in which any process of printing by letter-press, lithography, photography or other similar work incidental to such process or book-binding is carried On.
15. Employment in any residential, restaurant or eating house as defined in Bombay Shops and Establishments Act, 1948.
16. Employment in any Shop or Commercial establishment other than that covered under any of the other entries in this Schedule.

Explanation: For the Purposes of this entry the expression "Shop" and "Commercial Establishment" shall have the same meaning as assigned to them in Bombay Shops and Establishments Act, 1948".

4. To turn to the Notification dated 18th April, 1959. The Schedule annexed to this Notification relating to employment in any shop or commercial establishment, divided the State into six zones. Ahmedabad, it is common ground, is in Zone II. In each zone there are four types of employees and three classes of workmen, viz., Skilled, Semiskilled and Unskilled; as will be seen from the relevant and material part of the Schedule set out below:

SCHEDUL E "B"

Rates for Zone II.

Classes of Employees in the said scheduled employment.

Shops employing more than two employees and all commercial establishments, except those in the heading of column 4.

Shops employing two or less employees except those in the heading of column 4.

Shops and commercial establishments wherein a "manufacturing process" as

defined in the Factories Act, 1948, is carried on and shops and commercial establishments employing less than ten employees in the business of tailoring, hair cutting saloons, and laundries and others rendering similar services.

1 2 3 4

Skilled

? ? ?

Semi Skilled

? ? ?

Unskilled

? ?

Rs.60.00 for employees of 22 years and above.

It is the case of the petitioner that whereas under the earlier Notification of 31st January, 1956, he was paying his workmen Rs. 36-10-0 for a month of twenty-six days, i.e., Rs. 1-6-6 per day, he is now compelled to pay them Rs. 60/- per month.

5. Three contentions have been urged before us by Mr. I. M. Nanavaty, learned advocate for the petitioner. It is firstly contended that the workmen of the petitioner are entitled to wages only according to the earlier Notification of 31st January, 1956. The whole force of the argument here rests upon an insistence that the workmen employed by the petitioner fall under the added item of employment No. 13 viz., "Employment in any cotton ginning or cotton pressing manufactory"- It is said that the workmen employed in any cotton ginning or pressing factory and doing the work of picking and cleaning raw or ginned cotton would be covered by the Schedule to that first Notification and that as workmen doing unskilled (light) work they would be "entitled to Rs. 36-10-0 per month. It is said that though the petitioner, does not actually carry on business of ginning and pressing cotton manufactory, the definition of "Scheduled Employment" in Section 2(g) is so wide that it must include the workmen employed by the petitioner. It is said that cleaning of cotton is a process or branch of work forming part of the work done in a pressing factory and therefore the workmen employed by the petitioner must be regarded as employees employed in pressing manufactory. This premise, in our opinion, is wholly unsound. And on this premise has been raised the structure of the argument that although the Petitioner does not carry on the business of any pressing manufactory, the workmen employed by him should be regarded as employees employed in a pressing factory and there for within the ambit of added item No. 13 to the Schedule. The contention, in our opinion, is ill-founded and untenable. We fail to see how the definition in Section 2(g) can in any manner lend support to the case of the petitioner. It is unnecessary to consider this contention any further and it must be rejected.

6. It is secondly urged that the petitioner's business carried on in his godown is neither a shop nor a commercial establishment, but a manufactory. Learned Advocate has sought to derive support for the present contention from a decision of their Lordships of the Supreme Court in *Kalidas Dhanjibhai Vs. The State of Bombay*, . The argument here is that the petitioner's is a potential factory and our attention has been drawn to some observations of Mr. Justice Bose in that case. That case arose from an order of conviction and sentence of fine imposed under the Bombay Shops and Establishments Act, 1948. The accused owned a small workshop in which he employed three workmen. The method of his doing business was to go to the local mills, to collect orders from them for small parts of machinery, to manufacture those parts in his workshop, to deliver the parts to the mills when ready and to collect money therefore from the mills. No buying or selling was done on the premises. The question arose whether the workshop was a shop as defined in Section 2(27) of the Bombay Shops and Establishments Act, 1948, and it was held by the Supreme Court that the workshop in question was not a shop within the meaning of that Provision. The question which arose for examination by their Lordships was totally different and the observations made by them were in a wholly different context, and it is not permissible to read these observations in a manner divorced from their context. That being the position, it is not necessary to burden this judgment with the observations to which our attention has been drawn by Mr. Nanavaty, Mr. Nanavaty has also relied on the Explanation at the foot of the Notification dated 10th December, 1957. We agree that for the purpose of the entry 16 of that Notification, the expressions "Shop" and "Commercial Establishment" must be given the same meaning as assigned to them under the Bombay Shops and Establishments Act, 1948. The expression "Commercial Establishment" is defined in Section 2(4) of that Act as under:

"2 (4).--"Commercial Establishment" means an establishment which carries on any business, trade or profession or any work in connection with or incidental or ancillary to any business, trade or profession and includes a society registered under the Societies Registration Act, 1860, and a charitable or other trust, whether registered or not which carries on whether for purposes of gain or no; any business, trade or profession or work in connection with or incidental or ancillary thereto, but does not include a factory, shop, residential hotel, restaurant, eating-house, theatre or other place of public amusement or entertainment.

* * * * *

The expression "Shop" is defined in Section 2(27) as under:

"2 (27).--"Shop" means any premises where goods are sold, either by retail or wholesale or where services are rendered to customers, and includes an office, a store room, godown, warehouse or work place, whether in the same premises or otherwise mainly used in connection with such trade or business but does not include a factory, a commercial establishment, residential hotel, restaurant, eatinghouse, theatre or other place of public amusement or entertainment.

* * * * *

The argument is that the definition of "Commercial Establishment" excludes from its purview a "factory" and that the definition of shop also excludes from its purview a "factory". Section 2(9) , gives the following definition of "Factory" :

"2 (9).--"Factory" means any premises which is a factory within the meaning of clause (a) of Section 2 of the Factories Act, 1948".

It is not necessary for the purpose of examination of the present argument to set out here the definition of "Factory" in the Factories Act. It will suffice to say that one of requirements of that definition is that among other things, ten or more workers must be working in the premises in order to constitute the same a factory. The argument has run that the definition of "factory" should not be strictly applied when we have to consider the expressions "Shop" and "Commercial Establishment", described in item No. 16 of the Schedule. It is in this context that reference was made by Counsel to the expression "potential factory" and to the decision of their Lordships of the Supreme Court. That decision as we already mentioned, has no bearing on the question before us. We are here concerned with an Explanation and which Explanation by incorporation brings into the Schedule the meaning of expressions "Shop" and "Commercial Establishment" as defined in the Bombay Shops and Establishments Act, 1948. There is little scope for the argument that the business of cotton in the godown where the petitioner carries on his business is not a shop nor a commercial establishment but a potential factory and outside the ambit of entry 16 of the Schedule read with the Explanation to the same. The present contention also must therefore be negated.

7. It is lastly urged before us and very strenuously that the Notification dated 18th April, 1959 under the schedule to which is fixed the salary of unskilled workmen at Rs. 60 per month, is ultra vires the State Government. It is said that there is discrimination between workmen working in a small godown like that of the petitioner doing the work of cleaning and sorting waste and workmen doing the work of cleaning and sorting waste in pressing factories. The workmen in the pressing factories, it is said, if the number of them be ten or more, would be governed by the provisions of the Factories Act and no question of fixing their wages could arise under the Minimum Wages Act. Therefore, so the argument has proceeded, there is no reasonable basis for the classification and there is unreasonable discrimination between workmen doing the same kind of work sitting in the petitioner's godown and others doing the same kind of work sitting in a factory where there is a pressing machine and ten or more workmen are employed. Reliance has been placed on entries 1 to 12 in the Schedule and it is said that they relate to employment in specified industries or specified business and relate to employment of doing similar work. Item 13, it is said, deals with a specified industry and so also does item 15. But item 16 is too general and creates a classification without any reasonable basis and which results in unreasonable discrimination amongst workmen. The argument is that workmen

employed by the petitioner do the work of cleaning and sorting waste, and similar work would be done by workmen employed in a pressing factory having on its roll ten or more workmen. The salary that the petitioner has to pay is now fixed by the later Notification of 18th April, 1959 whereas the salary that would be paid to persons doing similar work in a pressing factory would be different. That would be either under the first Notification of 31st January, 1956 or in accordance with the wages payable to persons employed in a factory under the Factories Act. The argument so found ed is that the fundamental right of the "petitioner guaranteed , by Article 14 of the Constitution in the matter of equality before the law and equal protection of the laws has been violated. At first blush it may seem that there is something to be said for the grievance made by the petitioner. But if the true principle and the true rule of the matter be borne in mind, it must become clear that the contention is not sound.

8. Stuff of Constitutional law differs profoundly from the ordinary law. The phrases "equality before the law" and "equal protection of the laws" in Article 14 are of convenient vagueness. While they seek to embody the inevitable principles enshrined in the preamble to our Constitution and deny any special privilege by reason of birth, creed, wealth, social status Or the like, they require the Court to be cautious about pressing the broad words to a drily logical extreme. Again and again, and in various forms the Courts have repelled the effort to spell pedantic and theoretic perfection of equality and subscribed to the unpretentious assertion that class legislation discriminating against some and favouring others is prohibited, but legislation which in carrying out this objective is limited in its application, is not prohibited, if within, the sphere of its operation it affects alike all persons similarly situated, or to put it somewhat differently, there is no hostile discrimination between them. The way we read the entries in the Schedule to the Minimum Wages Act and the two Notifications to which reference has been made, we do not think we would be justified in acceding to the contention that there has been any arbitrary selection in the matter of fixing the salaries of persons employed in shops and commercial establishments where any manufacturing process is carried on. Clearly, there is a difference in the situation of persons working in the godown of the petitioner and the persons doing the work of cleaning cotton and sorting it out in a pressing factory. It would not be appropriate nor correct to speak of them as persons belonging to the same class in the contexts of discriminatory legislation. The overlapping that may result in such cases must be attributed to the circumstance that no classification can be scientifically perfect or logically complete.

9. Equality before the law guaranteed by Article 14 is an affirmation of the well-known fundamental principle that among equals the law should be equal and should be, equally administered; that like should be treated alike. This principle is applicable to all matters whether great or small and is evidently one which requires only to be stated to be at once assented to as being just. The ambit of operation of. Article 14 has been explained by the Supreme Court in a series of cases beginning with Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and

Others, and ending with Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, . The basic concepts and the broad, formula have now been clearly established and were reiterated by Mr. Justice Das, as he" then was, in Budhan Choudhry and Others Vs. The State of Bihar, . Some argument has been advanced before us by Mr. Nanavaty on the basic principles now so well established and in view of the argument, it? seems to us that it is necessary to refer to the basic concepts. At page 1049 (of SCR) : (at p. 193 of AIR), of the report in that case his Lordship observed:

"It is now well-established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different basis; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration".

10. A classification is reasonable when it is not an arbitrary selection and rests on differences pertinent to the subject in respect of which the classification is made. The ostensible purpose for and the circumstances in which the classification or category is made is always a pertinent inquiry but not the sole test of the matter: Decided cases, as I pointed out in S.C. Prashar and Another Vs. Vasantsen Dwarkadas and Others, , show that Courts have sustained differentiations where the difference might not be apparently divorced from the purpose and circumstances in which any category was sought to be established by legislation. After all, laws are not abstract propositions and each classification has to be considered substantially and qualitatively and not superficially. The article is a pledge of equality before the law and equal protection of the laws, but it does not guarantee to all persons the benefit of the some laws and some remedy or identical procedure.

11. It bears recalling that the difficulty that arises at times is not now in the ascertainment of the principles which determine the ambit and operation of the equal protection clause; but it is in their application to the facts and circumstances relevant in examination of the legislation which is challenged and in determining on which side of the line of demarcation indicated by those principles can the case be said to fall. The presumption in favour of constitutionality which permits the Court to assume that the law is directed to problems manifest by experience and that its discriminations are based on adequate grounds sometimes helps in resolving a difficult case lying on the border line. No classification can be logically complete or accord with a pattern of plumb-line precision. When the impugned legislation indicates a policy and brings

within its operation those who are similarly situated and it appears that the policy is the result of specific difficulties and the end to which it is directed is not objectionable on the ground that there is arbitrary or hostile discrimination, the Court will not overthrow it simply because it is not couched in all-embracing terms, and results in inequality of treatment. In any such case, the resultant inequality cannot be said to have been imposed by the legislation nor can it be said to flow from any discriminating class legislation favouring some and putting others under a disadvantage. I have repeated here what I had occasion to say on another occasion.

12. Considered in the light of these observations, it seems to us that the classification sought to be challenged by the petitioner cannot be said to result in such discrimination as would be hit by the equal protection clause. In the result the present contention of the petitioner must also be " negated.

13. The petition fails and will be dismissed with costs. The rule will be discharged.