

(2006) 03 KL CK 0085

In the High Court Of Kerala

Case No : W.A. No. 2026 of 2003 and 1008 of 2004

Cochin Mazdoor Sangh

APPELLANT

Vs

Bobby

RESPONDENT

Date of Decision : 29-03-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Minimum Wages Act, 1948 — Section 3, 3(1A), 3(2A), 3(3), 9
Payment of Wages Act, 1936 — Section 4

Citation : (2006) 110 FLR 926 : (2006) 3 KLT 317 : (2006) 3 LLJ 702

Hon'ble Judges : V.K. Bali, C.J.;S. Siri Jagan, J

Bench : Division Bench

Advocate : N. Nagaresh, for the Appellant; K. Lakshmi Narayanan, Government Pleader, N.N. Sugunapalan O.D. Sivadas, E.R. Venkateswaran, Antony C. Ettukettil and R. Sreehari, for the Respondent

Judgement

V.K. Bali, C.J.—By this common judgment, we dispose of these two connected Writ Appeals arising from the judgment dated 14th August, 2003 passed by the learned Single Judge in O.P.No. 261 of 2001. Writ Appeal No. 2026 of 2003 has been filed by the additional respondents 8 and 9 while Writ Appeal No. 1008 of 2004 has been filed by respondents 1 to 3, in the original liSection

2. M.C. Bobby, President, Kerala Cine Exhibitors Association, the petitioner in the original lis challenged the notification issued by the Government as G.O. (Rt) No. 4153/2000/LBR dated 2nd December, 2000, revising the minimum rates of wages payable to the employees of the Cinema Theatres in the State, a copy of the notification aforesaid was placed on record as Ext.P1. By the notification aforesaid, a revision of wages was made in respect of the employees of the Cinema Theatres right from Manager to sweeper cum scavenger. It is the case of the petitioner that the last notification for the same purpose was challenged before this Court in O.P. No. 1190 of 1988. That O.P. was disposed of by judgment dated 24th June,1992. The court held that classification made for distinctive treatment would be invalid and arbitrary and the Government ought

not to have fixed the rate in a uniform manner throughout the State. It was found that it would be illogical to hold that the notification was validly issued. After detailed consideration, taking into account various judgments of the Supreme Court, learned Single Judge quashed the notification. Against the judgment, placed on record as Ext.P2, an appeal was preferred by the Government in 1992. When the same was taken up for hearing on 21st of November, 2000, petitioner reported that a fresh notification has been issued on the basis of the report of the Committee dated 22nd May, 1999 calling for objection by the respondent for revising the wage section Accordingly, the appeal was dismissed as in fructuous directing the parties to challenge the notification in appropriate proceedings, if they were aggrieved. When the fresh notification, Ext.P1, came to be issued, petitioner placed objections before the respondents questioning the validity of the same. The notification, Ext.P1, issued by the Government u/s 9 of the Minimum Wages Act revising/fixing the minimum wages of the employees engaged in the Cinema Theatres in the State of Kerala was challenged/on the same grounds as urged in O.P. No. 1190 of 1988 referred to above, which was allowed and the appeal whereof became in fructuous, in the manner mentioned above.

3. In support of the petition, it was urged before the learned Single Judge that the number of shows in the theatres in cities and in panchayats are different and in the theatres in the cities usually there would be four regular shows whereas, in panchayat areas, there would be only two regular shows in a theatre. The invasion of cable network in the field of cinema is threatening the cinema shows and the business generated there from being substantially reduced was also highlighted before the learned Single Judge. It was also urged that fixation of minimum wages in respect of workers working in the whole of the State, irrespective of the nature of work and nature of collection in the theatre was arbitrary and volatile of Article 14 of the Constitution of India. The minimum wages fixed by the Government was fixing of equal wages for unequal work was also a contention raised before the learned Single Judge.

4. Learned Single Judge observed that the minimum wages fixed by the Government would be "equal wages for unequal work" and would be discriminatory and violative of Article 14 of the Constitution of India. The aforesaid observation was made in the context of the judgment of the learned Single Judge in Achuthan v. State of Kerala 1992 (2) KLT 189 Ext.P2 judgment (OP No. 1190 of 1900) referred to above, which, as mentioned above, was subjected to appeal and which became in fructuous The learned Single Judge, however, quoted the following observations from Achuthan v. State of Kerala (supra) and agreed with the same.

9. The Committee constituted by the Government for fixing the minimum wages declined the request of the industry to classify Cinema Theatres into different groups, on the ground that principle of equal pay for equal work must be made applicable to the Industry. This approach, I am afraid, is not reasonable. Article

14 of the Constitution permits reasonable classification founded on rational basis. Therefore, it is permissible to provide for different pay scales in the same cadre of employment on the basis of the region in which the Theatre is situated. In *Harbans Lal and Others Vs. State of Himachal Pradesh and Others*, the Court took the view that the principle of equal pay for equal work cannot be invoked invariably in every kind of service particularly in area of professional service. It was also held that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the post concerned. If the classification has reasonable nexus with the objective sought to be achieved, the State would be justified in prescribing different pay scales. As I stated earlier, the Cinema Theatres situated in hilly areas of the State cannot be treated similarly with those situated in Cities and Municipalities. The employees engaged in the theatres in different regions are placed in different situations and they are not to be treated similarly relying on the principle that equal pay must be for equal work.

10. The Supreme Court in *Ministry of Labour and Rehabilitation and Another Vs. Tiffin's Barytes Asbestos and Paints Ltd. and Another*, observed that 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 most substantial grounds. This according to me, applies on all fours to the facts of this case. Since the fixation of minimum wages in the instant case has been made in an arbitrary manner, which has resulted in substantial illegality, I have no hesitation in quashing the same, I do so.

Learned Single Judge also placed reliance on the decision of the Supreme Court in *State of Haryana and Anr. v. Tilak Raj and Ors.* 2003 AIR SCW 3382 and quashed Ext.P1. It is against this order of the learned Single Judge recorded in O.P. No. 261 of 2001 dated 14th August, 2003 that the present Writ Appeal has been filed.

5. Learned Counsel for the appellant vehemently contends that judgment of the learned Single Judge is patently opposed to law and is unsustainable and the learned Single Judge failed to note that minimum wages u/s 3 of the Minimum Wages Act, 1948 are fixed not on the basis of the income generated by the industry or establishment, but on the basis of the need of the workmen employed in the business in order to ensure the sustenance of the workmen and their family. Learned Counsel also urged before us that Section 3 of the Act enables the State to fix minimum wages in cinema theatres irrespective of rural and urban classification.

6. We have heard learned Counsel for the parties and with their assistance examined the records of the case and the impugned judgment. However, before we may analyse and make comments on the contentions of the learned Counsel, it would be useful to take into consideration the relevant provisions of the Minimum Wages Act, (referred to as Act II of 1948). By virtue of the provisions contained in Sub-section (1) of Section 3 of the Act, the appropriate Government

would provide fixing of minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule by issuance of a notification. Sub-section (1A) of Section 3 gives discretion to the Government to refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than one thousand employees. Sub-Section (2A) of Section 3 deals with non-applicability of minimum rates of wages in cases where disputes are pending. Sub-section (3) of Section 3 of the Act which has some bearing upon the controversy in issue 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 employments;

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

(iii) adults, adolescents, children and apprentices;

(iv) different localities;

(b) minimum rates of wages may be fixed by any one or more of the following wage periods, namely:

(i) by the hour,

(ii) by the day,

(iii) by the month, or

(iv) by such other larger wage-period as may be prescribed;

and where such rates are fixed by the day or by the month, the manner of calculating wages for a month or for a day, as the case may be indicated;

Provided that where any wage periods have been fixed u/s 4 of the Payment of Wages Act, 1936 (IV of 1936), minimum wages shall be fixed in accordance therewith.

7. A perusal of Section 3(3) of the Act would clearly manifest that in fixing or revising minimum rates of wages, different minimum rates of wages for different employments in the schedule, in different localities is permissible. The statute, thus, in clear and unequivocal manner, authorises the State to fix different minimum rates of wages in different localities. The duty is cast upon the State by the provisions of the Act to fix and revise minimum rates of wages. Providing rate of wages which would be less than the minimum payable will be illegal and the workmen would be entitled to fixation or revision from time to time, the minimum wages that may be fixed under the provisions of the Act. The fixation and revision of wages and the enabling provisions are declaratory in nature. It is also clear from a reading of the provisions quoted above that fixation of

minimum wages only ensures sustenance of the workmen and for that capacity of the employer to pay has no relevance in the concept of minimum wages. It further appears to us that, although fixation of different rates of minimum wages for the same job in different towns and municipalities is permissible under the Act and such minimum wages can be lesser in rural areas and more in urban areas, the question to be decided is whether fixing of same minimum rates of wages for different localities would be violative of Article 14 of the Constitution of India.

8. Having pondered over the issue and given our thoughtful consideration, we are unable to subscribe to the view taken by the learned Single Judge. The mere fact that Legislature permits fixation of different minimum wages for different areas/localities would not mean that fixation of same rate in different localities would be impermissible. It would be well nigh impossible to declare notification issued under the statute to be violative of the Constitution, being opposed to Article 14 thereof on that ground and this is what precisely has been done by the learned Single Judge. In quashing notification Ext.P1, issued under Act II of 1948, learned Single Judge relied upon an earlier judgment of this Court, recorded in O.P. No. 1190 of 1988 which, as a matter of fact, was challenged in appeal, but the Writ Petition as such was withdrawn as the same had become infructuous on the ground of revision of minimum wages by subsequent notification. Thus, the judgment rendered by the learned Single Judge had not attained finality. The fact of there being no finality attached to the judgment in O.P. No. 1190 of 1988 *Achuthan v. State of Kerala* (supra) recorded by the learned Single Judge, apart, the same does not appear to be laying the correct law as well. It would be seen that the notification was invalidated on the sole ground that principle of equal pay for equal work could not be invoked invariably in every kind of service, particularly in the area of professional service and further that the committee constituted by the Government for fixing the minimum wages had declined the request of the Industry to classify Cinema Theatres into different groups on the ground that principle of equal pay for equal work must be made applicable to the industry, was not reasonable in the view of the learned Single Judge, inasmuch as Article 14 of the Constitution would permit reasonable classification founded on rational basis. We are afraid, the reasons given by the learned Single Judge in bringing the impugned notification under the vice of Article 14 of the Constitution of India cannot hold good. The said finding appears to have come about from the provisions of the Statute and in particular, Section 3(3) of Act II of 1948 which, in terms, permits fixation of different minimum rates of wages in different localities. The fixation of different minimum rates of wages in different localities primarily depends upon the minimum amounts required for sustenance of the workers and their family and many other factors which may be relevant in fixation of minimum rate of wages in different localities. To illustrate, the minimum rate of wages to the employees in the cities may be more than in the rural areas for the same set of employees. As surely, the hospitals and other industries in the cities are spending more

money than the hospitals and other industries in rural areas, it may thus be desirable to fix different minimum rates of wages for employees working in urban and rural areas irrespective of the fact that they may be carrying out same duties. But that, however, does not mean, same minimum wages cannot be fixed irrespective of the locality. Fixation under the Act is the minimum wages and not of maximum wages. The mandate of the law is not to pay less than the minimum wages, which does not necessarily mean that the employer may not or cannot pay more wages than the minimum fixed depending upon his capacity to pay. Just because the Government has been given the power to fix different minimum rates of wages for different localities in appropriate cases that does not mean that the Government cannot prescribe same minimum rate of wages for all localities in the case of a particular employment. That being so, in a given case, the Legislature can well provide the same minimum rates of wages for a set of employees irrespective of the locality, industry, etc., but, as mentioned above, the minimum as fixed must be paid to the workmen. The Legislature only enjoins the employer not to pay less than the minimum fixed in the statute. Therefore, even if there is the same minimum wage fixed for a set of employees wherever they may be located, the notification cannot be quashed as suffering from the vice of Article 14 of the Constitution of India. A Single Bench of the Bombay High Court in *The N.M. Wadia Charitable Hospital and Others Vs. State of Maharashtra and Others*, has held that,

It is by now well settled that minimum wages is a wage which in any event must be paid, irrespective of the extent of profits, the financial condition of establishment or availability of workmen on lower wages. This minimum wage is independent of the kind of industry and applies to all alike, big or small. It sets the lowest limit below which wages cannot be allowed to sink in all humanity. It's main object is to prevent sweated labour as well as exploitation of unorganized labour. Even a provision of law which permits payment of less than minimum wage to workmen, is invalid as offending the provision of Article 23 of the Constitution.

What, therefore, is impermissible is fixing less than the minimum wages. Fixation of same minimum wage even in different localities would be permissible. As mentioned above, such minimum wages shall have to be paid with no embargo on the employer to pay more.

9. The Honourable Supreme Court in *Hindustan Antibiotics Ltd. Vs. The Workmen and Others*, held that,

The principle of region-cum-industry, the doctrine that the minimum wage is to be assured to the labourer irrespective of the capacity of the industry to bear the expenditure in that regard, the concept that fair wage is linked with the capacity of the industry, the rule of relevancy of comparable concerns, and the recognition of the totality of the basic wage and dearness allowance that should be borne in mind in the fixation of wage structure, are all so well settled and recognised by industrial adjudication, that further elaboration is unnecessary.

10. The Honourable Supreme Court in *Ministry of Labour and Rehabilitation and Another Vs. Tiffin's Barytes Asbestos and Paints Ltd. and Another*, held that,

The notifications fixing minimum wages are not to be lightly interfered with under Article 226 on the ground of some irregularities in the constitution of the committee or in the procedure adopted by the committee. A notification fixing minimum wages, in a country where wages are already minimal, should not be interfered with under Article 226 except on the most substantial 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.

11. In the light of the discussions made above, we are of the considered view that the law laid down by the learned Single Judge in the judgment annexed as Ext.P2 reported in *Achuthan v. State of Kerala* (supra) and which has been followed in the impugned judgment, does not lay down the correct law. The same is overruled. Consequently, the Writ Petition filed by the petitioner is dismissed and the present appeals are allowed. In view of the fluctuating fate of the parties, costs are made easy.