
(1996) 03 BOM CK 0031
In the Bombay High Court
Case No : Writ Petition No. 992 of 1993

K.C. Khandelwal

APPELLANT

Vs

State of Maharashtra and ors

RESPONDENT

Date of Decision : 13-03-1996

Acts Referred:

Minimum Wages Act, 1948 — Section 2, 27, 3, 5, 5(1)

Citation : (1996) 5 BomCR 720 : (1998) 3 LLJ 847 : (1996) 1 MhLj 1000

Hon'ble Judges : J.K. Chandrashekhara Das, J;G.R. Majithia, J

Bench : Division Bench

Judgement

Majithia, J,

1. The petitioner, Shri K.G. Khandelwal, President, All India Auto and Miniature Bulb & Components Manufacturers' Association, has challenged Notification dated January 1, 1993 issued by respondent No. 1 in exercise of powers conferred by clause (a) of sub-section (1) of Section 3 read with Sub-section (2) of Section 5 of the Minimum Wages Act, 1948, in this Writ Petition under Article 226 of the Constitution of India.

2. The Minimum Wages Act, 1948 (for brevity "the Act") was enacted to prevent exploitation of labour and for that purpose authorises the appropriate Government to take steps to prescribe minimum rates of wages in the schedule industries. In an under-developed country which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum wage rates, the capacity of the employer need not be considered. What is being prescribe is minimum wage rates which a welfare state assumes every employer must pay before he employs labour.

3. Section 3 of the Act enables the appropriate Government to 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. Section 27 contains the procedure for making additions to the Schedule.

4. Respondent No. 1, by notification No. MWA/5281/3065/CAB. 7 published u/s 27 read with Section 2(g) of the Act dated June 24, 1986 inserted the following entry at Serial No. 68 in the Schedule :-

"Employment in any Glass Bulb Manufactory." On February 1, 1989, respondent No. 1 constituted a Committee u/s 5 of the Act to hold enquiries into conditions of services prevailing in Glass Bulb Manufactory, to advise Govt. to fixation of minimum rate of wages. The Committee held its first meeting in Bombay on July 6, 1989. It collected required information in Bombay on July 20, 1989. It held meetings with the representatives of the concerned industry at Thane on August 18 and 19, 1989; at Nagpur, Jalgaon, Pune and Bombay from October 21 to 23, 1989; and at Aurangabad from March 11 to 15, 1991. The Committee gave public notices in local newspapers on September 24 and 25, 1990, inviting representations from the persons likely to be affected by the fixation of minimum wages. The Committee completed its report after complying with all the formalities enjoined under law on March 13, 1991. The petitioner for the first time filed a representations on April 29, 1991. The committee submitted its report to respondent No. 1 on September 30, 1991. The petitioner filed another representation on January 15, 1992. The Labour Minister of the Government of Maharashtra accepted the report of the Committee on September 24, 1992. The report was sent to the Law and Judiciary Department for approval on October 21, 1992. The Law and Judiciary Department accorded approval on November 25, 1992 and the notification was issued on January 1, 1993. The same is challenged in this writ petition. These facts have been supplied to us by the Under Secretary to the Government of Maharashtra, Industry, Labour and Energy Department. The facts have not been disputed by the counsel for the petitioner. We had to send for the record of the department as we found that the affidavit filed by the State was vague. Certain allegations made in the petition were not controverted. Certain facts which ought to have been disclosed in the affidavit were not disclosed and the correct factual position remained obscure, necessitating the summoning of the record. The record was produced by the learned Advocate General and we record our appreciation for the very fair stand taken by him. But for the record, certain indisputable facts may have led to a mistake in adjudicating the dispute.

5. The facts stated above reveal in unmistakable terms that the State Government, after complying with the procedure prescribed, fixed the minimum wages for the industry which was added in the Schedule by notification dated June 24, 1986.

6. Now the stage is set to examine the submissions made by the learned counsel for the petitioner. Learned counsel submitted that the Committee appointed u/s 5 of the Act did not consider the objections filed by the petitioner and in support of

his submission he relied upon *H.B. Verma v. Union of India* 1992 LIC 1039, more particularly on the observations made in para 11. In para 11 of the report it is stated that the Advisory Board granted approval to the proposed notification to be published u/s 3 of the Act without discussing the objections raised by the writ petitioners. In the instant case, the objections were filed by the petitioner after the Committee had concluded its deliberations and finalised the report. The objections were not filed by the petitioner when a public notice to this effect was issued. It is not stated by the petitioner that he had no knowledge of the public notice. A public notice presupposes a knowledge to the world at large and nobody can be heard to say that he was not aware of the public notice. The ratio of this judgment is inapplicable to the facts of the instant case.

The learned counsel then relied upon a decision of this Court in *The N.M. Wadia Charitable Hospital & Ors. v. State of Mah. & Ors.* (in writ petitions Nos. 1303 and 1699 of 1985 decided on September 23, 1986) to contend that the Government issued the notification u/s 3 read with Section 5 of the Act fixing the minimum rates of wages payable to employees employed in the employment specified in the Schedule, without considering the report of the Committee appointed u/s 5(1)(a) of the Act. The ratio of this judgment is inapplicable as, on facts, we have come to a conclusion that the notification u/s 3 read with section 5 was issued after considering the report of the Committee appointed u/s 5(1)(a) of the Act. The learned counsel also relied upon *Achuthan v. State of Kerala* 1992 2 CLR 447 to contend that the Government could not fix uniform rates for the schedule industry which is situated in various regions of the State; and that the industry situated in different regions could not be treated alike and uniform wages could not be fixed. No such objection has been taken in the writ petition. At any rate, we do not consider that the benevolent provisions of the Act can be circumvented on technical grounds.

The learned counsel then relied upon *Mumbai Kamgar Sabha & Ors. v. The State of Mah. & Ors.* 1990 2 CLR 372 to contend that the report of the Committee is unreasoned. The original report of the Committee has been produced before us by the Under Secretary to the Government of Maharashtra, Industry, Labour and Energy Department. A perusal of the same reveals that the report of the Committee is well reasoned. The Committee took into consideration every conceivable aspect before making the recommendation for the increased in the minimum wages. The report of the Committee indicates that the Committee visited all the important districts in the State. It held discussions with the representatives of the industry. It followed a procedure consistent with propriety and fair play. It cannot even remotely be suggested that the report of the Committee is not a reasoned one.

7. The learned counsel then submitted that the petitioner's representation dated January 15, 1992 submitted to the Minister was not considered by the State Government and hence the notification fixing the minimum wages stands vitiated. The submission is devoid of merits. Section 5 of the Act reads thus :-

"5. (1) In fixing minimum rates of wages in respect of any schedule employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate Government shall either -

(a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be, or

(b) by notification in the official gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, not less than two months from the date of the publication, on which the proposals will be taken into consideration.

(2) After considering the advice of the committee or committees appointed under clause (a) of sub-section (1), or as the case may be, all representations received by it before the date specified in the notification under clause (b) of that sub-section, the appropriate Government shall, by notification in the Official Gazette, fix, or as the case may be, revise the minimum rates of wages in respect of each schedule employment, and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue :

Provided that where the appropriate Government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1), the appropriate Government shall consult the Advisory Board also."

Section 5 is in two parts. The appropriate Government has two options in fixing or revising the minimum rates of wages as envisaged by the Act, namely (i) appoint Committee to hold enquiry in respect of such fixation or revision; (ii) by notification in the official gazette fix or revise the minimum rates of wages in respect of scheduled employment. In the latter case when the appropriate Government intends to fix or revise the minimum rates of wages in respect of a scheduled employment, it has to consider the objections/representations, if any, filed by the party affected. In the instant case, the Government did not opt for the second option, viz. it did not issue a notification of its own, for fixing or revising the minimum rates of wages in respect of a scheduled employment. It appointed a Committee and the Committee, after due deliberations, submitted its report. The Government accepted the report after considering not only the report of the Committee but the comments of the department concerned.

8. In fairness to the learned counsel, one more judgment cited by him must be noted. He submitted that the State Government did not examine the capacity of the industry to pay the minimum wages. In support of his submission, has relied upon Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, . The submission is devoid of merits. A perusal of the Committee's report indicates that it had taken into consideration all the relevant factors, including the capacity to pay while fixing the minimum wages.

9. Moreover, the notification dated June 24, 1986 under which the industry was

inserted in the Schedule at Serial No. 68, relating to employment in any Glass Bulb Manufactory, has not been challenged in the writ petition and we need not comment on this. Learned counsel very fairly stated that notification dated June 24, 1986 is not under challenge and that he has confirmed his submission only with regard to the notification dated January 1, 1993 fixing the minimum wages.

10. For the reasons stated above, the writ petition fails and is dismissed. Rules is discharged. No order as to costs.