
(1966) 02 KL CK 0012
In the High Court Of Kerala

Madhavan and Others

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 04-02-1966

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1966) 10 KLJ 980 : (1967) 1 LLJ 765

Hon'ble Judges : P.T. Raman Nair, J

Bench : Single Bench

Judgement

P.T. Raman Nayar, J.—Four points are urged in support of this petition. None of them seem to me to furnish any ground for interference.

2. The first is that some of the petitioners do not actually employ any beedi-makers but get their beedis made by independent contractors. If that be so, they have nothing to fear since the impugned notifications, Exs. P. 1 and P. 2, state in express terms that they apply only to employees. They do not apply to Independent contractors and leave the concerned petitioners unaffected.

3. The second is that the minimum wages fixed are considerably higher than those fixed in the neighbouring States of Madras and Mysore which compete in our markets. The result would be to kill the beedi Industry in this State. This is no doubt a very important consideration which the appropriate Government must bear in mind in fixing minimum wages but it is hardly Justiciable. In particular, I fail to see how the fact that other State Governments have fixed lower rates for their States than the Kerala Government has fixed for this State can attract Article 14 of the Constitution, which it is said has been violated.

4. The third is that the proviso in Ex. P. 2 fixing a dearness allowance by the day is meaningless, unless the number of working hours per day is specified, and it is said that Section 13(1) of the Act (Central Act 2 of 1948) enjoins such specification. I should have thought that the cost of living is more closely related to the period of time a man exists rather than to the number of hours of work he

does, and I see nothing meaningless in fixing a dearness allowance by the day without specifying the number of hours the employee concerned should work. That apart, the number of hours of work constituting a normal working day is specified in Rule 24 of the Kerala Minimum Wages Rules made u/s 30(2)(g) of the Act, and, if it is necessary to link up dearness allowance with a normal working day, it is obvious that the day of the impugned notification can only mean the day defined in Rule 24. Section 13(1) does not make it obligatory for the appropriate Government to fix the number of working hours per day whenever it fixes minimum wages. On the very language of the section it may do so if it thinks fit; or it may leave the matter to be governed by rules made u/s 30(2)(g). And, in any case, the section shows that the fixation of the number of working hours per day is something to be done after the minimum wages have been fixed.

5. The fourth and the last is that the provision in Ex, P. 3 fixing clearness allowance at a piece-rate is opposed to Section 4(1)(i) of the Act. I do not think it is. u/s 4(1)(i), the minimum wage fixed u/s 3 may consist of a basic wage and a dearness allowance called a special allowance. The basic wage can, in terms of Section 3(2), be on the basis of either a time-rate or of a piece-rate; and so can the special allowance. It is true enough that the cost of living is not proportionate to earnings, but dearness allowances are usually fixed in terms of percentage of the earnings, there being different percentage for different slabs. And it seems to me quite clear that Section 4 read with Section 3 of the Act expressly contemplates a dearness allowance fixed on a piece-rate.

6. I dismiss the petition.