

(1991) 09 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 914 of 1987 (R)

Mahipal Dadha and others

APPELLANT

Vs

State of Bihar and others

RESPONDENT

Date of Decision : 25-09-1991

Acts Referred:

Minimum Wages Act, 1948 — Section 11, 2(g), 26, 27, 3

Citation : (1993) 1 PLJR 564

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : Anil Kr. Sinha, Raj Nandan Sahay and B. Dutta, for the Appellant;
A.K. Mehta, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J

1. In this application, the petitioners have prayed for issuance of an appropriate writ for quashing a notification dated 5th April, 1986 issued by the State of Bihar purported to be in exercise of its power conferred upon it u/s 3 (ia) and section 5 (ib) as also u/s 27 of the Minimum Wages Act, 1948 (hereinafter to be referred to and called for the sake of brevity as the said Act) whereby and whereunder, inter alia, a religious and social Institution has been included in the first schedule appended to the said Act and fixed the minimum wages payable to the employees employed in the said Establishment. The fact of the matter lies in a very narrow compass.

2. The petitioners are said to be the President, Secretary and Treasurer of Jain Swetamber Society, a religious Trust which manages Sikharjee Group of Jain Temples at Parasnath Hill at the foot of Hill and other Jain Temples within the district of Giridih, Munger and Bhagalpur.

3. Allegedly, Sikharjee temple and Pawapuri Temple are places of immense religious importance of the Jains. The said tirthas are governed under the

provisions of Bihar Hindu Religious Trust Act, 1950 and are directly under the supervision and control of Bihar State of Swetambar/Digamber Jam Religious Trust Boards constituted thereunder.

4. According to the petitioners, the expenses required to manage the temples and Dharamsalas are made from donations received from the pilgrims and others. The donations are also accepted for specific purposes, as per example ; for puja purposes, the donations are received under the head "Deo Drabya" and for payment of salaries to the Pujari and other staff donations are received under the head "Sadharan". The petitioners have contended that donations received under a specific heading can be spent for the said purpose only.

5. The petitioners have further contended that a religious Institution, therefore, cannot be brought within the purview of the said Act. It was further submitted that if the provisions of Minimum Wages Act are made applicable, the consequences mentioned in paragraph 28 of the writ application shall ensue which are as follows :?

(I) Temples and Dharamshalas will be a place for strike demonstrations, Gheraos and other illegal acts causing irreparable loss and inconvenience to visiting pilgrims :

(II) That entire sanctity of spiritualism will disappear ;

(III) The working staffs will refuse to worship duties in temple after specified hours and on Holidays.

(IV) Pilgrims reaching late will not be allowed to offer puja, sewa in Temples as the pujari may refuse to open door of temple on account of specified duty hours.

(V) Pilgrims reaching at late hours will not be served with accommodation in Dharamshalas, food, other amenities as workers may refuse to attend them on the plea of out of duty hours.

(VI) Working of free kitchen will be abruptly disturbed on account of working hour system and they may leave the kitchen when the food are even half cooked.

(VII) There will be difficulties in providing accommodations to pilgrims on account of refusal by the workers on the ground of duty hours.

(VIII) Management will be not able to serve the visiting pilgrims with service round the clock.

(IX) There will be no element of religion peace, spiritual means and other pious obligations inside the campus.

(X) Services of part time workers will either be abolished or full wages has to be given.

(XI) There will be termination of such staffs working in temples and Dharamsalas located in remote villages where income is far below the rate of

Minimum Wages and even regular puja-sewa of such temples are likely to be disrupted.

(XII) There is no scope for increase in income of a religious institution which solely runs on charity with that of a commercial establishment where income can be raised by price.

(XIII) Application of Minimum Wages to temples and Dharamshalas will upset the budgets and may compel them to reduce employments at the costs of efficient management.

(XIV) Fixation of Minimum Wages in Religious and Social Institution will also disturb the budget as further payments in shops increments as per price index and cost of living allowances has to be paid.

6. In the alternative, it was submitted that in any event, the said notification is illegal and without jurisdiction inasmuch as prior to issuance thereof the mandatory requirements of law as contained in Section 5, 7 and 9 were not followed.

7. Mr. A.K. Sinha, Learned Counsel appearing for the petitioner has principally raised three contentions in support of this application.

8. Learned Counsel firstly submitted that a Religious Institution being not an "industry" the provisions of the said Act have no application in relation thereto and thus, the notification dated 5th April 1986 as contained in Annexure 1 to the writ application must be held to be ultravires Section 27 of the said Act.

9. Learned Counsel next contended that in any event a composite notification under Sections 27 and Section 5 of the said Act cannot be issued.

It was also contended that as the mandatory provisions of Sections 5, 7 and 9 have not been complied with, no minimum wages can be fixed for the employees working under the petitioners.

10. The said Act was enacted to provide for minimum rates of wages in certain employments. Section 2 (g) defines "scheduled employment" as meaning.

an employment specified in the schedule, or any process or branch of work forming part of such employment.

Section 3 provides for fixation of minimum rates of wages Sub-section (1-A) of Section 3 of the said Act provides that :

Appropriate Government may 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 engaged in such employment, but if at any time, the appropriate Government comes to a finding after such inquiry as it make or cause to be made in this behalf that the number of employees in any scheduled employment in respect of which it has refrained from fixing minimum rates of wages has risen to one thousand or more, it shall fix minimum rates of wages

payable to employees in such employment.

Sub-section (3) of section 3 of the said Act provides that :

different minimum rates of wages may be fixed for?

- (i) different scheduled employments;
- (ii) different classes of work in the same scheduled employments;
- (iii) adults, adolescents, children and apprentices;
- (iv) different localities;

The said provision also authorises the State to fix minimum rates of wages 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 large wage-period as may be prescribed.

Section 4 of the said Act provides for what would consist of the minimum rate of wages fixed or revised by the appropriate Government.

Section 5 provides for the procedure for fixing and revising the minimum wages.

Sub-section (1) of section 5 which is relevant for the purpose of this case reads as follows :?

Procedure for fixing and revising minimum wages.? (1) In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages to be fixed, the appropriate Government shall either?

- (a) appoint as many committees and sub-committees, as it considers necessary to hold inquiries 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 notification, on which the proposal will be taken into consideration.

Section 7 provides for appointment of an Advisory Board.

Section 9 reads as follows:?

Composition of Committees, etc.? Each of the committees, subcommittees and the advisory Board shall consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled

employments, who shall be equal in numbers; and independent persons not exceeding one third of its total number of members; one of such independent persons shall be appointed the Chairman by the appropriate Government.

Section 11 of the Act empowers the appropriate Government to direct that wages either wholly or partly may be paid in kind.

Section 26 of the Act provides for exemptions and exceptions.

Section 27 which empowers the State Government to add to the Schedule reads as follows:?

The appropriate Government, after giving by notification in the Official Gazette not less than three month's notice of its intention so to do, may by like notification add to either part of the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act and, thereupon the Schedule shall in its application to the State be deemed to be amended accordingly.

11. The provisions of the Minimum Wages Act is a piece of social welfare legislation. It is also a beneficent legislation so far as the employees employed in a scheduled employment is concerned.

12. In *D (a minor) v. Berkshire CC* reported in 1987 Vol. I All E.R. 21, the House of Lords said that broad and liberal construction should be made to give full effect to the legislative purpose. The said Act is a social welfare legislation under taken to further the directive principles of the State Policy.

See *Ministry of Labour & Rehabilitation and another v. Tiffin's Barytes Asbestos & Paints Ltd.* and another reported in AIR 1985 SC 1291.

13. In *Purnea Zila Majdoor Union v. State of Bihar* reported in 1989 PLJR 493, a Division Bench of this Court of which I was a member held that the State is obliged to make a suitable legislation to secure to all the workers a living wage. It was further held that workmen are entitled to receive minimum wages from their employer irrespective of the fact as to whether the employer is in a position to pay the same or not.

14. It may be true that Tirthas in question are being run and managed on donations. However, although the Institution in question is a religious and charitable Institution, the same may also be an "industry" as has been held by the Supreme Court in *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, . The Supreme Court in the aforementioned decision held :?

Can charity be "industry" ? This paradox can be unlocked only by examining the nature of the activity of the charity, for there are charities and charities. The grammar of labour law in a pluralist society tells us that the worker is concerned with wages and conditions of service the employer with output and economics and the communities with peace, production and stream of supply. This complex of work, wealth and happiness, firmly grasped, will dissolve the dilemma of the

law, bearing on charitable enterprises. Charity is free, industry is business. Then how ? A lay look may scare; a legal look will see; a social look will see through a hiatus inevitable in a sophisticated society with organizational diversity and motivational dexterity.

125A. If we mull over the major decisions, we get a hand of the basic structure of "industry" in its legal anatomy. Bedrocked on the ground norms, we must analyse the elements of charitable economic enterprises, established and maintained for satisfying human wants. Easily, three broad categories emerge; more may exist. The charitable element enlivens the operations at different levels in these patterns and the legal consequences are different, viewed from the angle of "industry".

126. The first is one where the enterprise, like any other, yields profits but they are siphoned off for altruistic objects. The second is one where the institution makes no profit but hires the services of employees as in other like businesses but the goods and services, which are the output, are made available, at low or no cost, to the indigent needy who are priced out of the market. The third is where the establishment is oriented on a humane mission fulfilled by men who work, not because they are paid wages, but because they share the passion for the cause and derive job satisfaction from their contribution. The first two are industries, the third not what is the test of identity whereby these institutions with eleemosynary inspiration fall or do not fall under the definition of industry ?

The Supreme Court observed :?

All industries are organized, systematic activity. Charitable adventures which do not possess this feature, of course, are not industries. Sporadic or fugitive strokes of charity do not become industries. All three philanthropic entities, we have itemised, fall for consideration only if they involve co-operation between employers and employees to produce and/or supply goods and/or services.

It was further held :?

The second species of charity is really an allotropic modification of the first. If a kind-hearted businessman or high-minded industrialist or service-minded operator hires employees like his non-philanthropic counter-parts and, in co-operation with them, produces and supplies goods or services to the lowly and the lost, the needy and the ailing without charging them any price or receiving a negligible return, people regard him as of charitable disposition and his enterprise as a charity But then, so far as the workmen are concerned, it boots little whether he makes available the products free to the poor. They contribute labour in return for wages and conditions of service. For them the charitable employer is exactly like a commercial minded employer. Both exact hard work, both pay similar wages, both treat them as human machine cogs and nothing more. The material difference between the commercial and the compassionate employers is not with reference to the workmen but with reference to the receipts of goods and services Charity operates not vis-a-vis the workmen in

which case they will be paying a liberal wage and generous extras with no prospect of strike. The beneficiaries of the employer's charity are the indigent consumers, industrial law does not take note of such extraneous factors but regulates industrial relations between employers and employees, employers and workmen and workmen and workmen. From the point of view of the workmen there is no charity. For him charity must begin at homo.

15. In view of the aforementioned decision, there is no doubt that where service is rendered in an organised manner through employment of workmen, charitable institution may also come within the purview of the definition of "industry".

16. Recently a learned Single Judge of the Calcutta High Court in *Workmen of M/s Baikuntha Nath Debasthan Trust v. State of West Bengal and others* reported in 1990 LAB I.C. 1586 held that a temple trust is an "industry".

17. The provisions of the said Act stands on a better footing. The said Act is applicable not to an "industry" but to a scheduled employment. Although the word "employment" has not been defined, the same would, in my opinion, bring in any Institution where employees are employed for carrying out systematic activities. Thus, the provisions of Minimum Wages Act may be applicable even in a case where the scheduled employment does not come within the purview of the definition of "industry".

18. In this view of the matter, in my opinion, the notification dated 5.4.1986 as contained in Annexure-1 to the writ application cannot be said to be ultra vires section 27 of the said Act.

19. However, from a combined reading of Sections 5 and 27 of the Act, there cannot be any doubt that the appropriate Government may fix minimum wages only after a notification is published in the official Gazette. Section 5 lays down the procedure for fixation and revision of minimum wages. It provides that for fixing minimum rates of wages for the first time, the same has to be done by appointing committees or sub-committees for holding inquiries and upon advising the appropriate Government in respect of such fixation or revision, as the case may be, or by a notification in the official Gazette the appropriate Government shall 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 notification, on which the proposal will be taken into consideration.

20. It is true as has been held by a Division Bench of this Court in *Chotanagpur Chamber of Commerce and Industries v. The State of Bihar and others* reported in 1990 (1) PLJR 177 that notification issued under the Minimum Wages Act are not to be lightly interfered with under Articles 226 of the Constitution. But in my opinion the same does not mean that procedures laid down for fixing of minimum wages can be waived altogether.

21. In *Chotanagpur Chamber of Commerce & Industries (supra)* a draft proposal had been issued and this Court upon consideration of the facts and

circumstances, therefore, held that the "crucial facts which required to be considered while deciding the validity of the notification revising minimum rates of wages is to see whether two months" time from the date of publication of the notification in the official Gazette for filing representation has been provided or not and whether it has also been stated that representations received within two months would be considered by the appropriate Government."

22. In this case, the petitioners have categorically stated in the writ application that neither any Committee or Sub-committee was constituted nor the procedures laid down under sections 5, 7 and 9 have been complied with. No counter affidavit has been filed in this case.

23. In this view of the matter, the statements made in the writ application must be accepted to be correct. In that view of the matter, as a composite notification u/s 27 and section 3 of the said Act have been issued and in view of the fact that admittedly the procedures laid down in the said Act have not been followed, that part of the notification whereby minimum wages for the employee have been fixed, cannot be sustained.

24. In the event the petitioners feel that it would cause immense hardship to them, if the provisions of the said Act are made applicable, their remedy lies in approaching the Government for exempting the "Trust" from the purview of the said Act in exercise of its power u/s 26 the said Act.

25. However, there cannot be any doubt that in view of the scheme of the said Act, a composite notification under sections 27 and Section 3 of the said Act is not contemplated under the provisions of the said Act. This becomes evident from the conjoint reading of the provisions of Section 27 and Section 5 of the said Act which provide for different period of notices for the purposes specifically provided therein. In the result, this application is allowed in part and only that part of the notification dated 5.4.1986 as contained in Annexure-1 to the writ application whereby Minimum Wages have been fixed for the workmen, is quashed. However, in the facts and circumstances of the case, the parties shall bear their own costs.