

**(1957) 11 KL CK 0019**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 346 of 1957**

Mangalore Ganesh Beedi Works

APPELLANT

Vs

State of Kerala

RESPONDENT

**Date of Decision :** 25-11-1957

**Acts Referred:**

States Reorganisation Act, 1956 — Section 120

**Citation :** AIR 1958 Ker 96 : (1957) 1 KLJ 1139

**Hon'ble Judges :** M.S. Menon, J

**Bench :** Single Bench

**Advocate :** A. Madhava Prabhu, for the Appellant; C.M. Kuruvilla, Govt. Pleader, for the Respondent

**Final Decision :** Allowed

## Judgement

M.S. Menon, J.—The petitioner challenges the validity of Ext. C, a notification of the Government of Kerala dated 14-6-1957 and published in the Kerala Government Gazette dated 18-6-1957, Part 1, page 1327. The opening words of the notification read as follows:

"Under Section 120 of the States Reorganization-Act, 1956 the Government of Kerala hereby order that the undernoted notification is made applicable to the Districts of Kozhikode, Palghat, Cannanore and other areas in the former Malabar District which have been transferred to the Trichur District with effect from 18-6-1957."

2. The "undernoted" notification is a notification of the Government of Travancore-Cochin dated 20-3-1952 and published in the Travancore-Cochin Government Gazette dated 25-3-1952, Part 1, page 315:

"In exercise of the powers conferred by Clause (a) of Sub-section (1) of Section 3 of the Minimum Wages Act, 1948 (Central Act XI of 1948), Government are hereby pleased to fix the minimum rates of wages payable to employees in beedi-making manufactories, the same having been previously published as required

by Clause (b) of Sub-section (1) of Section 5 of the said Act. The rates shall take effect from 25-3-1952.

Minimum Wages for making thousand beedies Re. 1 As. 14".

3. Section 3(1) of the Minimum Wages Act, 1948 (Central Act XI of 1948), provides:

"The appropriate Government shall, in the manner hereinafter provided.--

(a) fix the minimum rates of wages payable to employees employed--

(i) in an employment specified in Part I of the Schedule at the commencement of this Act, before 31-12-1954;

(ii) in an employment specified in Part II of the Schedule at the commencement of this Act before 31-12-1954;

Provided that the appropriate Government may, instead of fixing minimum rates of wages under this sub-clause for the whole State, fix such rates for a part of the State, or for any specified class or classes of such employment in the whole State or part thereof; and

(iii) in an employment added to Part I or Part II of the Schedule by notification u/s 27, before the expiry of one year from the date of the notification ;

(b) review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise the minimum wages, if necessary"; and Section 5:---

"(1) In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act, the appropriate Government shall either,--

(a) appoint a committee to hold enquiries and advise it in this behalf with such sub-committees for different localities as it may deem expedient to appoint to assist such committee, 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 proposals will be taken into consideration.

(2) After considering the advice of the committee 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 the minimum rates of wages in respect of each scheduled employment, and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue."

"Employment in any tobacco (including bidi making) manufactory" is item No. 3

of Part I of the Schedule to the Act.

4. It is not contended that the Government of Travancore-Cochin did not comply with the provisions of the Minimum Wages Act, 1948, or that the notification of the 20-3-1952 is in any way invalid as far as the Travancore-Cochin portion of this State is concerned. According to Section 2(h) of the States Reorganisation Act, 1956 (Central Act XXXI of 1956), "Law" includes "any enactment, ordinance, regulation, order, bye-law, rule scheme, notification or other instrument having the force of law in the whole or in any part of the territory of India" and it is also not disputed that the notification of the Government of Travancore-Cochin of the 20-3-1952 is a "Law" within the ambit of that definition.

The only contention is that Section 120 of the States Reorganisation Act, 1956, does not empower the Government of Kerala to extend the said notification of the Government of Travancore-Cochin to the whole or any portion of the District of Malabar.

5. Section 119 of the States Reorganization Act, 1956, deals with the territorial extent of the law and provides that the provisions of Part II of that Act which effected the territorial changes and the formation of the new States

"shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day existed or applied, and territorial references in any such law to an existing State shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day." . "

It is clear (and it is not disputed) that all that this section does is to provide that the laws in force in the Malabar District immediately prior to the appointed day (1-11-1956) shall continue to be in force in the Malabar District and that the laws in force in the Travancore-Cochin State shall similarly continue to be in force in the Travancore-Cochin portion of the new State of Kerala.

6. Then follows Section 120 which (omitting the Explanation thereto) reads as follows:

"For the purpose of facilitating the application of any law in relation to any of the States formed or territorially altered by the provisions of Part II, the appropriate Government may, before the expiration of one year from the appointed day, by order make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority."

7. According to counsel for the petitioner this section will not empower the Government of Kerala to introduce a law in force in the Travancore-Cochin portion of the Kerala State into the Malabar District or vice versa, and I am

inclined to agree with him. The power conferred by Section 120 is only a power of adaptation "for the purpose of facilitating the application of any law" and not a power to introduce new laws into any portion of the State. To "apply" a law is to bring it into contact with facts and circumstances, to put it into practical operation.

To "apply" a law, the law must be in existence in the area concerned -- the District of Malabar or Travancore-Cochin -- and a power to adapt laws in order to facilitate their application cannot possibly be construed as embracing a power to widen the territorial ambit of any legislation, primary or delegated, obtaining in the Malabar District or in the Travancore-Cochin portion of this State.

8. It is impossible to treat the extension of the Travancore-Cochin notification of the 20-3-1952 to the Malabar District as the issue of a fresh notification u/s 3 of the Minimum Wages Act, 1948. The wording of Ext. C and non-compliance with Section 5 will stand in the way, and the learned Government Pleader concedes -- quite correctly -- that apart from Section 120 there is no provision that he can invoke in support of the extension of the notification to the districts of Kozhikode, Palghat and Cannanore, the three districts into which the District of Malabar has been sub-divided since the formation of the State of Kerala.

9. My attention has been drawn to Section 121 of the Act:

"Notwithstanding that no provision or insufficient provision has been made u/s 120 for the adaptation of a law made before the appointed day, any court, tribunal or authority required or empowered to enforce such law may, for the purpose of facilitating its application in relation to any State formed or territorially altered by the provisions of Part II, construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before the court, tribunal or authority." and Section 127:

"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law."

I am unable to hold that either of these sections has any effect on the interpretation of the true scope and effect of Section 120.

10. The notification issued by the Government of Madras under the Minimum Wages Act, 1948, fixing the minimum rates of wages payable to employees employed in tobacco (including bidi making) manufactories appears to be Ext. A dated 27-9-1950. The Government Pleader submits that this notification was quashed by the High Court of Madras some years prior to 1-11-1956 and that when Ext. C was issued there was no notification in force on the subject in the District of Malabar. There is no affidavit to this effect before me; but as I see no reason not to accept the statement made at the Bar, I have accepted the same and proceeded on that basis.

11. In the light of what is stated above Ext. C is clearly unsustainable and has to be quashed as a notification beyond the powers of the Government of Kerala u/s

120 of the States Reorganization Act, 1956. Judgment accordingly.

12. The petition is allowed as above. No costs.