

(1985) 12 KAR CK 0025

In the Karnataka High Court

Case No : Writ Petition No's. 135 to 140 of 1984

Mizar Govinda Annappa Pai

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 04-12-1985

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (1986) ILR (Kar) 1293

Hon'ble Judges : Bopanna, J

Bench : Single Bench

Advocate : Tukaram S. Pai, for the Appellant; N. Devadas, HCGP for R-1 and A.G. Holla, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Bopanna, J.—The short point which arises for consideration in this batch of petitions is: Whether the State Government in exercise of its power u/s 5(2) of the Minimum Wages Act (in short Act) has the power to issue a notification revising the minimum wages with retrospective effect?

2. The petitioners are engaged in cashewnut processing industry in which the minimum wages was revised by the impugned notification for the benefit of the employees of the cashew-industry. The petitioners are the employers in these petitions. It transpires that there was no revision of minimum wages since the year 1975 and therefore a Committee was constituted by the State Government in exercise of its power u/s 5(1)(a) of the Act to go into the question of revision of minimum wages for this industry. That Committee made its recommendation prescribing the minimum wages in terms of the impugned notification with effect from First January 1983. The Committee, as required u/s 5(1) of the Act, consisted of the employers amongst whom were the petitioners, the representatives of the employees and independent members. There is no dispute about the constitution of the Committee and there is also no dispute about the

rate of wages recommended by the Committee. The only dispute now is whether it should come into effect from 1-1-1983 as recommended by this Committee or whether it should come into effect from 1-12-1983 i.e., after 3 months from the date of notification. The impugned notification in question was published in the Gazette on the 26th of November 1983 to come into effect from 1-1-1983. That means to say the State Government had given retrospective effect to the proposals made by the Committee constituted for the revision of wages.

3. Sri Tukaram S. Pai, Learned Counsel appearing for the petitioners submitted that regard being had to the plain language of Section 5(2) of the Act, the Government could have issued the notification only with prospective effect and in the absence of anything in Section 5(2) of the Act which expressly or by the implication confers on the Government the power to issue notification with retrospective effect, the impugned notification is bad in law. He submitted that the Government being a delegates of the power u/s 5(2) of the Act, unless by express words in Section 5(2) or by necessary implication such power is conferred on the Government it cannot in the exercise of its rule making power give retrospective effect to the impugned notification.

4. I am unable to accept this submission of the Learned Counsel. The scheme of the Act, for the revision of wages should be noticed. u/s 3 of the Act the appropriate Government, and in this case the State Government have the power to fix the minimum wages to employees of the cashew industry. u/s 3(b) of the Act it has the power to review if it thinks fit at such intervals not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates, if necessary. The proviso to Section 3(b) should also be noticed. The proviso reads as under :

"Provided that where for any reason the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years, nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them, if necessary and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force".

In this case it is not in dispute that the minimum wages were not revised by the Government since 1975. Consequently for a period of nearly 8 years till the impugned notification was made, the workmen employed in the cashew industry by virtue of the provisions of the proviso to Section 3(1) of the Act, were paid the minimum wages at the last revised rate fixed in the year 1975. This Court should take judicial notice of the fact that there had been a very high rise in the cost of living since 1975 and therefore the workmen were fully justified in demanding the revision of minimum wages. But despite the recommendation of the Committee constituted u/s 5(2) of the Act, the Government had not issued the necessary notification as required u/s 5(2) revising the minimum wages. That is the very reason the parties were constrained to enter into a settlement in the

course of conciliation as provided u/s 12(3) of the Industrial Disputes Act, and in that settlement the parties had agreed that the revised wages agreed to between them in terms of the said settlement should continue in force till the Government issued the necessary notification fixing the date on which the revised minimum wages would come into force. Section 5(2) of the Act reads as under :

5(2):- "After considering the advise 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 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 :

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.

Mr. Tukaram S. Pai, Learned Counsel for the petitioners placing reliance on the language of Section 5(2) of the Act, contended that the words "...and unless such notification otherwise provides" should be understood in the context of the words "on the expiry of 3 months from the date of issue" and thus understood they could only mean that the State Government could not issue the notification with retrospective effect. He relied on the decisions of the High Courts of the Madhya Pradesh and Calcutta on this point. Mr. Holla, Learned Counsel appearing for the second respondent-Union relied on the very same provision as also on the terms of the settlement of the parties produced as Ext. R-1 and submitted that the words "unless such notification otherwise provides," could also be interpreted as to mean that the Government had the power to issue a notification with retrospective effect and it is also clear from the terms of the settlement between the parties namely Annexure-R-1. The second limb of his argument is that even assuming that the notification cannot be issued with retrospective effect, it is not a fit matter for my interference under Article 226 of the Constitution.

5. The question whether a power could be exercised with retrospective effect or not touches upon the competency of the legislature or of the State Government as the case may be. In this case it is a case of subordinate legislation and that raises a substantial question of law which has to be decided by this Court. That apart, the legal effect of Section 5(2) will come up for consideration again and again and should be considered when the matter comes up in a given case. Therefore, it becomes necessary for this Court to consider whether the power conferred on the Government u/s 5(2) could be exercised with retrospective effect. In my view, the decision on this point should be rendered after taking into consideration the scheme and object of the Act. The scheme for the revision of the wages, as noticed earlier, is found in Section 5(1) of the Act. The appointment of the Committees under that sub-section is governed by Section 9

of the Act. u/s 9, each of the Committees, Sub Committees and the Advisory Board shall consist of persons to be nominated by the appropriate Government representing employer and employees in the scheduled employments, who shall be equal in numbers, and independent persons not exceeding one third of the total number of members ; one of such independent persons is appointed the Chairman by the appropriate Government. This Committee in practice undergoes considerable change from time to time either by resignation, or by death or by incurring disqualification by not attending 3 consecutive meetings fixed for the deliberations of the Committee. So the very process of the proper constitution of the Committee takes time and therefore any delay in the proper constitution of the Committee and consequent delay in revising the wages cannot enure to the benefit of the employer and to the disadvantage of the employees, If it is held the Government has got the power to issue the notification only with prospective effect, then the rights of the workman for the increased wages consequent on the revision could be denied by procrastination in the issue of the notification and in the deliberations of the Committee. That could not have been the intention of the Parliament while constituting the Committee for revision of wages and that is the reason u/s 5(2) the words unless "such notification otherwise provides" were introduced. That power could be recognised by implication also if the scheme of the Act is kept in view. It should also be noticed that as observed by this Court in *Jyothi Home Industries and ors. v. State of Karnataka* 1983(2) Lab. I.C. 1876 the connotation of "Minimum wages" is not contractual but statutory. The employer would be bound u/s 3 of the Act, by the minimum wages fixed or revised. Revision of wages is one mode of fixing the minimum rate of wages at the rate higher than what was fixed earlier under the Act. If this scheme of the Act is understood then it will not be difficult for this Court to adopt the purpose approach in interpreting Section 5(2), (See : 1971 AC. 850 - *Kammins Ballrooms Co. Ltd. v. Zenith Investments (Torquay) Ltd.* followed by me in W.P. 22061/81 and other WPs. - DD : 17/18-10-1985) - REPORTED IN ILR 1986 Kant 1273 and to come to the conclusion that the words "otherwise provides" are both prospective and retrospective.

6. In the circumstances, without going into the correctness of the decision of the Madhya Pradesh High Court and the Calcutta High Court on this point, it could be held that a power is conferred on the State Government u/s 5(2) to make a notification revising the wages with retrospective effect.

7. Those decisions do not take into consideration the scheme of the Act or the object but rest on the plain language of Section 5(2), The terms of the settlement between the parties support the case of the management as also the case of the workmen but it would not be proper while construing the provisions of a statute to call in aid the terms of a settlement under another enactment namely the Industrial Disputes Act. Therefore it is not open to the petitioners to challenge the impugned notification on the ground that the parties had intended not to give retrospective effect to that notification.

8. The Learned Counsel Mr. Holla submitted that alter natively it is not a fit case for my interference since the difference between the wages agreed to by the employer under the settlement Annexure R-1 and the minimum wages as revised under the impugned notification is very marginal. The settlement came into existence on account of the delay on the part of the Government in issuing the impugned notification. The Committee's recommendation was that the revision should come into effect from 1-1-1983. Obviously there was considerable pressure on the Managements for increasing the minimum wages and that is the reason the Managements had agreed to increase the minimum wages pending the issue of the notification by the State Government. This is also clear from the preamble to the terms of settlement and Clause 2 of the settlement. The parties had agreed and were also aware that the minimum wages as recommended by the committee should be given effect to from 1-1-1983. However, the Government having not issued the notification as expected of them on 1-1-1983 or earlier to that date, the parties were constrained to enter into a settlement as per Annexure R-1. Clause 5 of the settlement reads as under :--

"5. This settlement will be in operation for a period of one year and if in the meanwhile the Government notifies minimum rates of wages, this settlement will be inoperative from the date on which the revised Minimum Wages will come into force."

That means to say, the Management had agreed to give effect to the Government Notification on the date on which it came into force. Mr. Tukaram Pai submitted that the intention of the Management under Clause 5 was to give effect to the minimum wages notification as if it had prospective effect. Clause 5 by itself may support the case of Mr. Tukaram Pai but if Clause 5 is read with Clause 2 there is some indication in the settlement, that the parties had agreed to give effect to the revised rates of wages with effect from 1-1-1983 and therefore in terms of this settlement, it cannot be said that any prejudice has been caused to the petitioners by the impugned notifications. In that view of the matter, alternatively, this is not a fit matter for this Court to exercise its jurisdiction under Article 226 of the Constitution. For these reasons petitions are dismissed.