

(1967) 05 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1645 of 1963

Mohan Brothers Scientific Goods Manufacturers	APPELLANT
Vs	
State of Punjab and Another	RESPONDENT

Date of Decision : 19-05-1967

Acts Referred:

Constitution of India, 1950 — Article 14
Industries (Development and Regulation) Act, 1951 — Section 2
Minimum Wages Act, 1948 — Section 2, 27, 5, 5(1)
Punjab Minimum Wages Rules, 1950 — Rule 3

Citation : AIR 1967 P&H 490

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : J.S. Chawla, for the Appellant; G.P. Jain, Advocate-General, for the Respondent

Judgement

Shamsher Bahadur, J.—This is a petition of Messrs. Mohan Brothers Scientific Goods Manufacturers under Articles 226 and 227 of the Constitution of India to challenge the minimum wages fixed by the State of Punjab on 16th May 1963, by virtue of a notification of that date issued under Sub-section (2) of Section 5 of the Minimum Wages Act, 1948 (hereinafter called the Act).

2. The establishment of the petitioner manufacturers scientific goods, and is located in Ambala Cantonment employing nine workmen. Under the Act, the appropriate Government u/s 27 may

"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." A notification was issued u/s 27 of the Act by the State of Punjab, which is the first respondent, on 1/6th February 1958, adding at No. 16 "employment in Scientific Industries to be an item in Part I of the Schedule attached to the Act.

In order to appreciate the contention of the learned counsel for the petitioner, to which I would shortly advert, it may be pointed out that under Clause (b) of Section 2 of the Act, "appropriate Government" means:--

"(i) in relation to any scheduled employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a mine, oilfield or major port, or any corporation established by a Central Act, the Central Government, and

(ii) in relation to any other scheduled employment, the State Government." "Scheduled employment" is defined in Clause (g) of Section 2 to mean "an employment specified in the Schedule, or any process or branch of work forming part of such employment" "Employment in Scientific Industries", under which heading the establishment of the petitioner falls, clearly became a part of the Schedule annexed to the Act, and thereby became a "scheduled employment" as defined in Clause (b) and (g) of Section 2 of the Act.

It is the case of the learned counsel for the petitioner, that the notion of "scheduled employment" should be read in relation to a subsequent Central Act enacted in 1951, namely the Industries (Development and Regulation) Act, 1951 (hereinafter referred to as the Regulation Act), Section 2 of which declares that:--

"It is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule."

The First Schedule annexed with the Regulation Act mentions at item No. 16 "Scientific instruments". It is contended by the learned counsel for the petitioner that scientific instruments" having been specified as a scheduled industry under the Regulation Act, is not a subject-matter of control by the State Government under the provisions of the Act.

This contention appeal"s to me to be wholly devoid of force. The Act was enacted in 1948 and the "scheduled employment" has been defined therein. The notion of scheduled employment" must have relation in the context and meaning of the Minimum Wages Act and not any subsequent legislation like the Regulation Act. There can be no manner of doubt that the industry was properly added in the Schedule attached to the Act under the provisions of Section 27 by the appropriate Government. The "scientific instruments" industry of the petitioner is not being carried out under the aegis or control of the Central Government and the State Government consequentially is the appropriate Government to deal with it under the provisions of the Act.

3. By notification of 22nd October 1962, the State Government in- exercise of the powers conferred by Clause (a) of Sub-section (1) of Section 5 of the Act, appointed a Committee to advise the Government in fixing minimum rates of wages for the first time in respect of the

"employment in scientific industries is Punjab, added to the Schedule to the said Act. vide Punjab Government Notification No. 1433/ 1230-C-Lab-58/9411, dated

the 6th February 1958".

Shri P.N. Bhalla and Shri Dev Raj Anant were appointed as the Government nominees to this Committee. Three persons were appointed as employers' representatives and three as employees' representatives. The Committee was required to make its recommendations to the Government "within three months of the date of this Notification".

4. Sub-section (1) of Section 5 of the Act is to this effect:---

"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 so fixed, the appropriate Government shall either:--

(a) appoint as many committees and subcommittees 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 notification, on which the proposals will be taken into consideration."

5. Shri P.N. Bhalla, who was one of the official nominees relinquished charge on 17th November 1962 and by a notification of 20th December 1962, the Labour Commissioner, Punjab, was appointed in place of Shri P.N. Bhalla. In fact, what was done by the Stabs Government was to amend the original notification of 22nd October 1962, in these words:--

"In the notification for the word "Shri P.N. Bhalla, I.A.S., Labour Commissioner, Punjab, Chairman" the words "Labour Commissioner, Punjab, Chairman", shall be substituted."

6. The learned counsel for the petitioner has submitted a variety of objections with regard to the constitution of this Committee, the recommendations made by it and indeed the "vires" itself of Sub-section (1) of Section 5 of the Act. It is submitted in the first place that Shri P. N. Bhalla having relinquished charge on 17th November 1962, the Committee could not thereafter function. There is no merit in this submission. The person holding the office of the Labour Commissioner was appointed in place of Shri Bhalla on 20th December 1962. Admittedly, there was no meeting of the Committee held between 17th November and 20th December 1962. The Committee held its final meeting on 28th January 1963, and the recommendations which were accepted by the Government on 16th of May 1963, were made on that date.

The counsel submits that the life of the Committee was for three months only, and after the 21st January 1963, the Committee had ceased to exist and consequentially no recommendations could have been made by it. There is a notification of 13th August 1963, of the respondent Punjab Government where

with the tenure of the Committee was extended from 22nd January 1963 to 21st February 1968. Rule 3 of the Punjab Minimum Wages Rules, 1950 is to this effect:--

"Term of office of members of the Committee. The term of office of the members of the Committee shall be such as in the opinion of the State Government is necessary for completing the enquiry into the employment concerned and the State Government may at the time of the constitution of the Committee fix such terms and may, from time to time, extend it as circumstances may require."

In construing a similar provision contained in Rule 3 of the Minimum Wages Rules, it was held by the Supreme Court in *Edward Mills Co., Ltd., Beawar v. State of Ajmer* AIR 1958 SC 25 that:--

"The State Government has, therefore, a right to extend the term of the committee in such way as it likes. It can do so after the period originally fixed has come to an end so as to revive it."

Thus, though the life of the committee may have expired on 21st January 1963, it could be revived by a subsequent notification of the Punjab Government of 18th August 1968. There is nothing invalid or illegal in the recommendations which were made by the Committee on 28th January 1963, within the extended period of time.

7. The learned counsel has then urged that the appropriate Government having been given an option to adopt either of the two courses mentioned in Clause (a) & (b) of Sub-section (1) of Section 5 of the Act, it must be held that the entire Sub-section is ultra vires as one of the two methods of fixing a minimum wage is harsher than the other. Now, the appropriate Government may either appoint a Committee to advise the Government in fixing minimum rates of wages or it may by notification publish its proposals and invite objections to them within two months before any final decision is made. The learned counsel has relied on the recent decision of the Supreme Court in *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, and my attention has been invited to the following passage in the judgment delivered by Mr. Justice Shelat to respect of Section 5 of the Punjab Public premises Act:--

"Under Section 5, if the Collector is satisfied that the public premises are in an unauthorised occupation he has the power to make an order of eviction giving reasons therefor. The contention is that the Government thus has two remedies open to it, one under the ordinary law and the other a drastic and more prejudicial remedy under the present Act."

Now, Section 5 itself provides two separate modes of procedure for fixing and revising minimum wages. Neither of these methods could be called more or less drastic than the other. Opinion is to be invited in both cases of all the interested persons. In one case Committee has to be appointed, and in the present case both the employers' and the employees' representatives were on the

Committee. In the second case, a notification is made and objections are invited. I do not think that there is any discrimination involved in these two procedures whose primary object is to enable the Government to reach a balanced conclusion with regard to the fixation of a minimum wage.

8. No other point has been urged in this petition which accordingly fails and is dismissed with costs.