(1996) 08 MP CK 0061

In the Madhya Pradesh High Court

Case No : M.P. No. 2199 of 1992

M.P. Lac Chapada Udyog Sangh APPELLANT

Vs

State of Madhya Pradesh and Another RESPONDENT

Date of Decision : 21-08-1996

Acts Referred:
Minimum Wages Act, 1948 — Section 27

Citation : (1998) 3 LLJ 1107

Hon'ble Judges : A.K. Mathur, C.J;S.K. Kulshreshtha, J

Bench : Division Bench

Advocate : N.S. Kale, for the Appellant; R.S. Jha, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mathur, C.J.—The petitioner by this writ petition has prayed that notification dated September 20, 1990 Annexure-P1 be declared ultra vires the provisions of the Constitution and notification Annexure-P3 dated April 11, 1989 and the notice Annexure-P7 dated April 7, 1992 may be quashed and the Respondent No. 1 be restrained from enforcing the minimum rates of wages fixed by notification Annexure-P1 dated September 20, 1990 to the employment in lac industry.

2. The petitioner is an Association of lac manufacturers, in the State of Madhya Pradesh and is registered under the Societies Registration Act. The main object of the Association is to safeguard the interest of its members. It is alleged that there are seven lac factories in Dhamtari, District Raipur. There are other industries i.e. one in Raigarh and nine in District Bilaspur at Pendra, Sakti, Katghora and Champa. Therefore, the petition has been filed at the behest of the Association challenging the rates of minimum wages vide notification Annexure-P1 on the ground that it is ultra-vires the provisions of Minimum Wages Act, 1948 (for short the Act of 1948).

3. It is alleged that lac industries are also located in the State of West Bengal, Bihar, Orissa and Maharashtra, but in those four States, no such minimum wage

has been fixed. It is alleged that it is only in the State of M.P. where the minimum wages have been fixed by notification Annexure-Pl dated September 20, 1990 for the employees of the lac industries to pay Rs, 25.15 for skilled workers, Rs. 21.35 for semi-skilled workers and Rs, 17.15 for unskilled workers. It is also alleged that apart from this, they are also required to pay Dearness Allowance according to the notified price index.

4. It is alleged that Section 3 of the Minimum Wages Act required the appropriate Government to fix minimum rates of wages payable to the; employees employed in an employment specified in Part-I or Part-II of the Schedule. The appropriate Government can amend the schedule and include the industries for which minimum wage rates can be fixed. It also provides that the Statt Government should refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than 1000 employees engaged in such employment. It is submitted that by notification dated September 23. 1988 Annexure-P4 employment in any lac manufacturing was included at Serial No. 37 in the Labour Department Notification dated February 24, 1988. The employment in lac manufacturing was formerly on scheduled employment under the Minimum Wages Act appearing at serial No. 9 of Part-1 of the Schedule. Minimum Wages for the workers of this employment were also fixed. It is alleged that looking to the conditions of the lac industry, this entry was deleted by notification dated January 7, 1992 on the protest of the members of the Association that the industry cannot afford to pay. Thereafter again on April 7, 1992, a notice was issued by the Assistant Labour Commissioner asking the Proprietor Shri Arurt Bhai Shail of Factory to pay minimum rates of wages to its employees as the lac industry falls within the general category of scheduled employment which carries on the manufacturing process as defined in Section 2(k) of the Factories Act, 1948. This residuary clause was included in the Schedule of Employment by notification Annexure-P3 dated April 11, 1989. In pursuance of this residuary clause, the aforesaid notification was issued. It is therefore contended that when a particular entry had been deliberately deleted by Entry 37, it is not open for the State to again enforce fixation of wages in exercise of the residuary clause. The petitioner has challenged Anncxure-P3 dated April 11, 1989 i.e. the inclusion of the residuary clause in the Schedule as ultra vires Section 27 of the Minimum Wages Act. It was therefore contended that no minimum wages can be fixed under Sections 3 and 5 of the Minimum Wages Act.

5. The respondent State has filed reply and contested the petition. It is submitted that it is true that lac entry in the schedule was deleted at one point of time but by virtue of residuary entry, minimum wages in the lac industry have been fixed. In order to appreciate the controversy, it would be relevant to refer to certain provisions of the Minimum Wages Act. Purpose of Minimum Wages Act, 1948 is to secure minimum wages for the work force and save them from exploitation of the employers. This is a social welfare legislation for work force. Art. 43 of the Constitution says that the State shall endeavour to secure, by

suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas. The Lac industry was included in the Schedule at Item No. 37--''Employment in lac Manufacturing''. Thereafter, perhaps on a representation of the lac manufacturers, the Government decided to delete the same on February 7, 1992 and the same was got deleted by Annexure-P6. But thereafter a notice was again given to the industry by taking resort to residuary clause inserted by notification dated April 11, 1989 which is sought to be challenged by the petitioner as also the notice Annexure-P7 dated April 7, 1992 issued to the petitioner for fixing the minimum wages.

Residuary Clause 38 reads as under :

"(38) Employment in any Manufacturing Process wherein Manufacturing Process as defined u/s 2 of the Factories Act, 1948 is carried out and which is not covered under any entry of the Schedule."

As per this residuary clause, any employment in which there is manufacturing process involved : as per definition in Section 2(k) of the Factories Act is carried on and is not covered by any entry in the Schedule, the same shall be covered by this residuary clause.

6. Shri Kale, learned counsel for the petitioner submitted that this clause is against provisions of Section 27 of the Minimum Wages Act, 1948. Section 27 empowers the State Government to include any employment in the Schedule but before that, three months'' notice of its intention to do so has to be issued and after inviting objections; such employment can be added or deleted in/from the Schedule. There are number of employments which have been enumerated in the Schedule and in the end of the Schedule, there is item No. 38 covering residuary entries thai any of the industries which are not covered by Schedule of Employment as mentioned, then it would be covered u/s 27 of the Minimum Wages Act, 1948 in accordance with the definition u/s 2(k) of the Factories Act. As such, this was the intention of including Clause 38 in the Schedule of Employment for purposes of covering certain employments which v/ere not specifically given in the list of Schedule of Employment. The residuary clause has been inserted with a view to cover any employment which is not specifically enumerated in the Schedule of Employment, if the same carries on manufacturing process as defined in Section 2(k) of the Factories Act. Section 2(k) of the Factories Act 1948 defines ''manufacturing process'' as under :

"(k) "Manufacturing process'' means any process for-

(1) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to use, sale, transport, deliver or disposal ; or

(ii) pumping oil, water, sewage or any other substance; or

(i''i) generating, transforming or transmitting power ; or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book-binding ; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels ; or

(vi) preserving or storing any article in cold-storage ;"

7. Therefore, the State thought it proper that instead of including the scheduled employment by particular name, residuary clause should be inserted so as to avoid the repetition of amending the schedule from time to time. Section 27 of the Minimum Wages Act authorises the State Government to amend the Schedule from time to time by exclusion or inclusion also. It is true that in January 1992, the State Government deleted entry 37 which pertains to employment of lac manufacturing but later on, on realising that there are large number of workers in the lac industry who are likely to be affected, the State Government under the residuary clause issued notice for fixation of minimum wage. Since the State Government has power u/s 27 of the Minimum Wages Act, 1948 to include or exclude any employment in the Schedule of Employments, it cannot be challenged on the ground that it cannot insert entry 38 in exercise of power u/s 27 of the Act. It included lac industry earlier in 1988 which was deleted. Simply because, at one point of time, the State Government thought of giving some reprieve to this industry, it does not mean that the power of the Government stood exhausted and it cannot enforce minimum wages to this industry. It is well within the power of the State Govt. to amend the Schedule from time to time and in fact it amended the Schedule and after some time realising that employment of this industry also requires to have minimum wages fixed, the State Government exercised its power u/s 27 of the Minimum Wages Act and such a power of the State cannot be termed as ultra-vires.

8. Learned counsel for the petitioner has challenged the validity of the notification inserting entry 38 in the Schedule of the Employment. As already mentioned above, the State has power and authority u/s 27 to add or amend the Schedule and the Schedule has been amended after complying with the requirements of Section 27 of the Act. Section 27 of the Act has fully been complied with. Inclusion of residuary entry at item No. 38 in the Schedule is not ultra-vires Section 27 of the Act.

9. Next question is regarding fixation of the minimum wage. Since the petitioner industry falls within the definition of manufacturing industry as defined in Section 2(k) of the Factories Act, 1948, it is open for the respondent State to enforce the minimum wages to the lac industry also and as such, nothing illegal has been done in the matter of fixation of minimum wages to this industry by the impugned notification. Notice Annexure-P7 dated April 7, 1992, therefore, cannot

be said to suffer from any illegality or infirmity.

10. In the result, we do not find any merit in the petition and accordingly it is dismissed, but without any order as to costs. Security amount if any be refunded to the petitioner.