
(1997) 06 MP CK 0002
In the Madhya Pradesh High Court
Case No : M.P. No. 2409 of 1987

M.P. Lime Manufacturers Association and Others	APPELLANT
Vs	
State of M.P.	RESPONDENT

Date of Decision : 30-06-1997

Acts Referred:

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

Citation : (1998) 2 LLJ 1054

Hon'ble Judges : A.K. Mathur, C.J.; Dipak Misra, J

Bench : Division Bench

Advocate : M.L. Jaiswal, for the Appellant; R.S. Jha, Dy A.G., for the Respondent

Final Decision : Allowed

Judgement

A.K. Mathur, C.J.—The petitioners by this petition have challenged the notification dated June 11, 1987 published in the M.P. Gazette dated June 26, 1987 (Annexure III), in so far as it relates to Loaders. Unloaders, Lime Packers and Grinders as illegal and against the provisions of the Act.

2. The brief facts giving rise to this petition are that the petitioner No. 1 is a non-trading Corporation framed and registered under the M.P. Non-Trading Corporate Act, 1962. It is a body corporate. The petitioner No. 2 is a Company having its registered office at 6-Middle Road, Hastings, Calcutta and its works at Satna Siding, Satna (M.P.) The Petitioner No. 3 is a registered partnership firm. The petitioners hold lease from the State Government for manufacture of lime. The petitioners' industry is governed by the provisions of the Minimum Wages Act, 1948, (hereinafter referred to as the "Act") and as per Sub-section (2) of Section 5 of the Act, the appropriate Government fixed the rates of minimum wages in respect of the employment in lime kilns, vide notification published in M.P. Gazette dated June 10, 1983 and various classes of employees were specified in the said Notification. Then again, the State Government wanted to revise the minimum rates of wages and issued a Notification on August 16, 1985 which was published in the M.P. Rajpatra dated July 11, 1986 (Annexure II). We are

concerned with item No. 19 of the said Notification which pertains to lime kilns and in that, proposals only for three categories for skilled labour, such as Mate, Mason and Blacksmith were shown for which the State Government had proposed to revise the minimum rate of wages. But, the petitioners did not object the proposals of the Government and did not make any representation against the said proposals. Therefore, the state Government issued a final Notification on June 26, 1987 revising the minimum wages in respect of employment in lime kiln, but in doing so in skilled categories, they have included persons like loaders, unloaders, lime packers and grinders, and fixed the minimum rates of wages for these categories. Therefore, the petitioners have challenged the validity by the said notification on the ground that the State Government has issued a final notification without inviting objections as required u/s 5(1)(b) of the Act.

3. Section 5(1) lays down a procedure for fixing and revising minimum wages and Section 5(1)(b) says that in fixing the 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 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, and after considering that, the same will be finalised in consultation with any committee, if so constituted.

4. The grievance of the petitioners in the present case is very limited that when the notification was issued inviting proposals these categories of persons namely, loaders, unloaders, lime packers and grinders, were not included in item No. 19 of the Notification as a skilled labour. But in the final Notification, they have been included in the category of skilled labour and the minimum rates of wages have been fixed.

5. The learned counsel for the petitioners submits that since there was no proposal for all four categories of persons as a skilled labour yet the Government has fixed their minimum rates of wages as a skilled labour, is in violation of Section 5(1)(b) of the Act as no such proposal was, at any point of time, taken for revision of pay scale for such kind of persons.

6. A return has been filed by the State Government and the State Government has not disputed this fact whether any proposal was invited or not. They have only said that certain representations were received from the Union and these categories have been included. It has also been pointed out that earlier notification dated April 12, 1983 did not treat the category of loaders, unloaders, lime packers and grinders as unskilled. It is also submitted that these categories were not included arbitrarily but they were included on the suggestion received from the affected persons and it is also pointed out that the mind of the State Government is still open on the subject for determination of classification of these categories of employees having regard to their actual nature of work.

Though the State Government in its reply stated that the mind is open but recently a notification dated July 11, 1987 has been brought to our notice and in that, all these categories of persons have been included as skilled labour. Be that as it may, however, the fact remains that Section 5(1)(b) of the Act requires that there should be first proposal and after receiving representation, then and then alone, the Government can decide and fix the minimum rates of wages, but that was not done; therefore, this notification is clearly in violation of Section 5(1)(b) of the Act. Our attention is invited to a decision of this Court in an identical situation in the case of *M.P. Bidi Udyog Sangh, Sagar v. State of Madhya Pradesh* 1981 M.P.L.J. 214 wherein the Division Bench of this Court has struck down such kind of proposal/ notification. It was held:

"It is necessary that the proposal must indicate the class or classes of employees for which the Government proposes to fix rates of minimum wages. If a particular class of employees is not indicated in the proposal, neither the employees nor the employers will have opportunity to make representation and the object behind Section 5(1)(b) would be defeated. Hence, notification u/s 5(2) cannot have application for those classes of employees which are not mentioned in the notification u/s 5(1)(b) of the Act"

7. In the present case also, notification u/s 5(1)(b) of the Act did not contain these categories of persons to be included in the skilled category for which minimum rates of wages have been fixed and u/s 5(2) of the Act. Notification was issued by the State Government. Therefore, this is clearly in violation of Section 5(1)(b) of the Act and as such this notification dated June 1, 1987 (Annexure II) published in M.P. Gazette on June 26, 1987, cannot be sustained.

8. In the result, this writ petition is allowed and the item No. 19 with regard to lime kiln under the heading of skilled labour like loaders, unloaders, lime packers and grinders, is struck down and they cannot be included under the category of skilled labour. However, it is open for the State Government to issue fresh notification in accordance with law, if it so chooses. Notification of 1997 is not challenged before us; therefore, any observation regarding this notification shall not be of any avail to the parties. No order as to costs. The amount of security, if any, shall be refunded to the petitioners.