
(1990) 08 BOM CK 0081
In the Bombay High Court
Case No : Writ Petition No. 205 of 1984

Mumbai Kamgar Sabha and Another	Vs	APPELLANT
State of Maharashtra and Another		RESPONDENT

Date of Decision : 21-08-1990

Acts Referred:

Minimum Wages Act, 1948 — Section 30

Citation : (1991) 1 BomCR 407

Hon'ble Judges : S.M. Dadu, J

Bench : Single Bench

Advocate : S.J. Deshmukh and P.M. Patel, for the Appellant; A.R. Shinde, for the Respondent

Judgement

S.M. Dadu, J.—This petition takes exception to the notification dated 12th September 1983 issued by the Industries, Energy and Labour Department of the Government of Maharashtra, vis-a-vis the minimum wages payable to different categories of employees and servants working in shops and/or commercial establishments, in the state of Maharashtra.

2. The Minimum Wages Act, 1948 is the medium through which minimum wages are fixed for various employments. The primary requirement for the applicability of the Act is to classify different types of employment as scheduled employments for which it is intended to fix minimum wages under the said Act. Once an industry gets listed as a scheduled employment, the State Government becomes entitled to fix minimum wages for the employees engaged therein. Shops and commercial establishments are to be found all over the State and thus were included in the schedule to the Act. After inclusion, the minimum wages were fixed for the first time in the year 1959. The question of revising the same for the third time came up in 1981 and the State Government appointed a Committee for this purpose under the Chairmanship of Mohamed Amin Khandwani, a Member of the Maharashtra Legislative Assembly. The Committee had an equal number of representatives of owners and employees and the

Member secretary was an Assistant Commissioner of Labour. The Committee visited different places in the State, queried various person and then came out with a report suggesting minimum wages payable to different classes of employees in different regions. Broadly, the division between shop employees was in three categories i.e. unskilled, semi-skilled and skilled. The State was divided into 7 regions and the minimum wage payable for the different categories in these regions was laid down. This wage was to be supplemented by a special allowance and the extent to which the same was to be given was specified zone wise, the number of such zones being four. The State Government after receipt of the report issued a notification accepting the same and it is that notification which is impugned by the petitioners, who are a trade union registered under the Trade Unions Act, 1926, and an office-bearer thereof.

3. The contention of the petitioner is that the concept of minimum wage is a well defined one and this has been brought out in several decisions of the Supreme Court. The Khandwani Committee had made basic errors while trying to comprehend what a minimum wage amounted to. This apart, it did not give reasons as to why particular figures were accepted as the minimum wage for different classes working in the different regions. Shortly stated, the report is an unreasoned document and it's recommendations should not have been accepted by the Government. This contention is countered by the State Government which contends that all the relevant factors were taken into consideration and that the report was unanimous in that it had concurrence or not only of the employers' representatives, but also of those representing the workmen. A report drawn up after a great deal of effort and which had the additional virtue of unanimity should not be set aside at the instance of only one of the trade unions amongst the many existing in this State.

4. I have been taken through the Khandwani Committee report. There is no doubt that of the Committee being made cognizant of different factors which went into the formulation of minimum wage for workmen in different classes and regions. But awareness of the factors which go into the moulding of a minimum wage is only one part of the task. The other, and more important, is as to how the said factors are to operate in a given set of conditions. Here, the Committee has classified the State of Maharashtra into different regions and those working in shops and commercial establishment into different classes. At page 9, the Committee has shown an awareness of the features to be taken into consideration while devising a minimum wage. These are in the nature of assumptions such as the size of a standard family of a workman, the caloric requirement of a workman, requirement for the purpose of clothing, house rent, fuel, lighting and the like items. But the committee has not worked out these items into monetary terms for the different regions. In relation to food, what it had to do was to find out what materials were consumed by workmen employed in shops and commercial establishments in different regions. Next, it had to find out what the cost of the cereals, pulse and other items of food worked out to. After this, a figure in terms of money should have been worked out to fit the

minimum stipulated by Dr. Ackroyd. The clothing requirement per family consisting of four individuals has been taken at 72 yards. But the quality of cloth and the price thereof has not been stated. In relation to rent, the figures given by the State from its Housing Department have been accepted. But how these figures apply in different regions remains unexplained. The last item allegedly taken into consideration is the price of fuel and lighting etc. For this purpose a flat rate of 20 per cent of the salary has been assumed. But how such items, like fuel and lighting would cost in different regions is not explained. At page 3.5 the Committee has given its view point. There, it admits that in order to satisfy the demands of labour with those of industry, it has adopted an approach of compromise. This as Mr. Deshmukh rightly comments, is an error, for in the formulation of minimum wages, the only factor to take into consideration is the basic requirements of a worker engaged in a scheduled industry. Counsel for the State Government has referred me to pages 14 and 15 of the report to show that the Committee had taken into consideration a number of factors. This amounts to no more than an awareness by the Committee of what factors required to be taken into consideration. But as said earlier, it was the applicability of the factors to the prevailing conditions, which was required for the Committee. That unfortunately has not been done. In para 5.3 appears the committee's recommendation suggesting a flat increase in the prevailing wage by 25 to 50%. But why this percentage is recommended is not explained. We are left guessing as to whether or not it corresponds to the rate at which price of basic items have increased. Again at para 5.4 there is a reference to the consumer price index having gone up by 165 per cent for which reason the Committee suggested an increase in the special allowance, a term synonymous with dearness allowance. The rate at which the special allowance has to be worked out has been stated, but no explanation gives as to why the said rates are accepted. The figures suggested by the Committee being ex-cathedra pronouncements, they cannot be accepted. The fact that the figures were the verdict of a Committee comprising representatives of the employers as also employees, has been pressed by Mr. Shinde for sustaining the notification. It is not possible to agree with this submission for the representatives have not performed the task entrusted to them. The task entrusted was not to arrive at mutually acceptable figure, but to give a report which would be a reasoned one and therefore, acceptable and fit for being notified as the minimum wage for the employees engaged in shops and commercial establishments.

6. I hesitate for it is not within my province to suggest what should be done by the State Government when the minimum wage for different industries has to be fixed. But this is the second time, I have come across a notification of the State Government accepting the minimum wage proposed by a committee presided over by a layman assisted by representatives of the management and the employees. With respect to this practice, they seem to do little more than take a trip around the State, collect memoranda from different organisations and produce an unreasoned document. The fact that so many persons lend their

signatures to some unexplained figures is not a reason for the State Government to adopt them without scrutiny. The better alternative, and again I reiterate that it is not strictly within my jurisdiction to so suggest, would be to appoint an expert to work out a minimum wage for an industry, the workmen of which the State Government believes, deserve protection in the matter of a minimum wage.

7. The result of the foregoing discussion is that the notification assailed in this petition has to be struck down and the matter remanded to respondent No. 1 for a fresh consideration in the light of what is stated above and the law applicable to the subject. Until the formulation of a revised minimum wage, the rates laid down in the impugned notification shall prevail. Rule in these terms is made absolute with parties being left to bear their own costs.