(2012) 08 GAU CK 0095

In the Gauhati High Court

Case No : Writ Petition (C) No. 5481/ 2011

Nandalal and Sons Tea Industries (P) Ltd. APPELLANT

Vs

The State of Assam and Another RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Constitution of India, 1950 — Article 38, 43
Minimum Wages Act, 1948 — Section 11(2), 11(3), 2(b)(i)(ii), 2(h), 3(1)(b)

Citation : (2012) 08 GAU CK 0095

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : S.N. Sarma, Mr. S.K. Kejriwal and Mrs. S. Kejriwal, Mr. G.N. Sahewalla and Mr. Md. Aslam, for the Appellant; A.K. Phukan, AG, Assam and Mr. B.J. Ghosh, GA, Assam, Mr. N.C. Das and SC, ATPPF and PF, Ms. M. Devi, for the Respondent

Final Decision : Dismissed

Judgement

Sharma, J.—All the writ petitions based on the same set of facts, raising the same issue, have been heard together and are being disposed of by this common judgment and order. The petitioners involved in this proceeding are companies incorporated under the Companies Act, 1956 and they are engaged in the business, inter alia, of plantation, manufacture and sale of black tea. They are the owners of Tea Estates in various districts of Assam. The challenge in this writ petitions are the minutes of the meeting fixing the cash value for supply of concessional food grains to the tea garden employees, held on 25.10.2010 (Annexure-K); the notification dated 1.12.2010 (Annexure-L) revising the minimum rate of wages and in addition, providing cash equivalent to food grains and the communication dated 14.12.2010 (Annexure-M), by which request was made to deduct provident fund contribution on the cash value of the foodgrain concession at the rate fixed by the Govt. of Assam with effect from 1.11.2010 and to deposit the same to the office of the Board of Trustees'' Account with the State Bank of India, United Bank of India and Central Bank of India. Upon hearing the Learned counsel for the parties including Mr. S.N. Sarma, Learned senior counsel assisted by Mr. S.K. Kejriwal and Mrs. S. Kejriwal; Mr. G.N. Sahewalla, Learned senior counsel assisted by Md. Aslam, Learned counsel for the petitioners and Mr. A.K. Phukan, Learned Advocate General, Assam assisted by Mr. B.J. Ghosh, Learned State Counsel, Assam and Mr. N.C. Das, Learned senior counsel assisted by Ms. M. Devi, Learned counsel appearing for respondent No.2 Board, my analysis of submissions, conclusions and findings are as follows.

2. The instant batch of writ petitions has originated from the earlier round of Litigations in the form of two writ petitions being WP(C) No. 4584/2001, filed by the Assam Tea Planters Association and WP(C) No. 5234/2001, filed by the Ganesh Kanoi Tea Company (P) Ltd., disposed of on 29.1.2004 followed by another batch of writ petitions, the Lead case being WP(C) No. 7323/2004 (Assam Brook Ltd. Vs. State of Assam & Others), disposed of on 12.8.2010.

3. In the first round of Litigation, the challenge was to the Letter dated 22.1.2001 and the Circular Letter dated 5.5.2001, by which the decision was conveyed to place the matter before the Board of Trustees'' for determining the entitlement with regard to computation of the value of food concession given to the workers. The Board of Trustees in the meeting held on 16/2/2001 adopted a resolution for deduction of provident fund contribution on value of food concession @ Rs. 130/- per month for the members of the staff and @ Rs. 3.65 per day for daily rated workers. The deductions were to be effective from 1.6.2001. It was noticed by the Court that there were objections on 2 counts, namely, as regard the effective date and secondly with regard to the rate determined by the Board of Trustees''.

4. By judgment and order dated 29.1.2004 disposing of the two writ petitions, it was held that the aforesaid resolution of the Board of Trustees fixing the rate of food value was recommendatory in nature and that the State Government would require to consider the same after due opportunity of hearing to all concerned including the employers and the employees'' association. For a ready reference, the operative part of the said judgment is quoted below:-

8. Therefore, the Resolution adopted by the Board of Trustees fixing the rate of food value in the meeting dated 16.2.2001 has to be construed as a recommendation to the appropriate Government. The State Government being the appropriate authority under the provisions of Section 2 (b)(i)(ii) of the Minimum Wages act has to consider the recommendation of the Board of Trustees and take final decision thereon. The decision of the Board of Trustees cannot be implemented straightway by a circular issued by the Secretary of the Board of Trustees. Situated this, this Court is of the opinion that the matter has to be referred to the State Government for consideration and orders.

9. In the result, the writ petitions stand disposed of, the circular dated 5th May, 2001 (Annexure-I) issued by the Secretary-cum-PF Commissioner, Board of

Trustees is hereby set aside and the matter is remanded back to the State Government for consideration and orders after due opportunity of hearing to all concerned including the employers and the Employees Association. The State Government will expedite the matter and pass appropriate orders as early as possible and preferably, not later than three months. No costs.

5. After the aforesaid judgment and order dated 29.1.2004 passed in WP(C) No. 4584/2001 and WP(C) No. 5234/2001, the Govt. of Assam in the labour and Employment Department vide its notice dated 17.5.2004 addressed to the various associations representing the employers and employees invited them to discuss the matter relating to food value. The representatives were also asked to submit their written statement showing the details of food value. Responding to the said notice vide Annexure-G communication dated 27.5.2004, the Assam Tea Planters'' Association raised objection of alleged non-furnishing of the particulars relating to the manner in which the Govt. wanted to proceed with the matter. Thereafter, the Govt. of Assam, in the labour and Employment Department issued the notification dated 1.7.2004 fixing the rate of value of food concession at Rs. 130/- for each staff member; Rs. 109.50 for sub-staff (monthly rate) and Rs. 3.65 per day for daily rated workers of the Tea Plantations in the State. It was indicated that deduction of provident fund contribution on the value of food concession would be effective from 1.6.2001 and that the same would remain in force for a period of 5 (five) years w.e.f. 1.6.2001 to 31.5.2006. This notification was followed by the circular Letter dated 6.7.2004 (Annexure-I) addressed to all the Tea Estates of Assam on the subject of Deduction of P.F. contribution on the value of food concession. By the said circular Letter, the aforesaid notification dated 1.7.2004 was referred to with the direction in respect of those gardens which had not deducted and deposited the PF dues on the value of food concession requiring them to do so immediately.

6. After the aforesaid development, the second round of Litigation started in the form of a batch of writ petitions, the Lead writ petition being WP(C) No. 7323/2004. The writ petitions came to be disposed of after six years by order dated 12.8.2010 with the following directions:-

In the backdrop of the above facts, which have led to the present set of writ petitions and the contentions raised by the petitioners, this Court is of the view that in the facts and circumstances of the present case, it would be appropriate and in the interest of justice to direct the Labor Department, to take into consideration various contentions, which have been raised by the petitioners and take a decision in accordance with law. While considering the contentions, which have been raised, the Government shall in particular bear in mind the following questions, which have been raised:-

(a) Whether the Cash Value of Food Concession is already included in the wages paid to tea workers/staff/sub staffs. If so, not to proceed any further in the matter.

(b) If the same is not included in the wages, to take a decision in the matter as to whether the same can be determined in the absence of any enabling provision in the ATPPF & PF Scheme Act.

(c) Whether any provision can be incorporated under the ATPPF & PF Scheme prescribing the mode and manner of such computation ?

(d) Whether the same can be determined under the provisions of Minimum Wages Act, 1948. If so to comply with all the provisions contained under the said Act.

(e) If at all, the Government takes a decision that the value of food concession is to be computed separately, the same has to be given effect prospectively and not retrospectively in view of the fact that under the Minimum Wages Act as well as Payment of Wages Act, no deduction is admissible from current wages of employees/workers and contribution is required to be deposited with matching employers'' contribution.

Because of what have been discussed and pointed out above, the impugned notification dated 1.7.2004 and circular dated 6.2.04 are hereby set aside and quashed and the matter is remanded back to the respondents particularly, respondent No.1, namely, Secretary to the Govt. of Assam, Labour & Employment Department, to examine and consider the matter in the light of what had been indicated above and take decision and pass orders in accordance with law.

The whole exercise, so directed, shall be completed within a period of 3 (three) months from the date of receipt of this order by respondent No.1, namely, Secretary to the Govt. of Assam, Labour & Employment Department.

7. The impugned Annexure-K is the minutes of the meeting for fixing the Cash Value for supply of concessional foodgrains to the tea garden employees, that was held in the official chamber of the Principal Secretary, Govt. of Assam, Labour and Employment Department on 25.10.2010. The meeting was held in reference to the aforesaid direction of this Court. The meeting was attended to by the Principal Secretary, Labour and Employment Department; Secretary-cum-PF Commissioner, ATPPF & PF Scheme; General Secretary, ACKS, Dibrugarh; Chairman, NETA, Golaghat; Secretary, ABITA, Guwahati; General Secretary, ACMS; Debeswar Bora; Vice Chairman, ATPA; Addl. Chairman, BCP and Secretary, Tea Association of India. On perusal of the minutes of the meeting it appears that after thorough discussion, the representatives of both the employees and employers'' Union arrived at the consensus that the wages being given in cash did not include the Cash Value of Food Concession. It was also unanimously resolved that in the different gardens, it is customary to pay foodgrains at a concessional rates in addition to the cash wage rate and such value to concessional foodgrains is considered while arriving at the bilateral agreement between the management and workers for determination of cash wages. For a ready reference, the decision that was arrived at in the meeting as

recorded in the minutes, is reproduced below:-

After thorough discussion, the representative of both the employees and employers unions arrived at the conclusion that the wages given in cash at present do not include the cash value of food concession. It is further observed with unanimity that in the Tea Gardens it is customary to pay food grains at concessional rates in addition to the Cash Wage rates and such value of the concessional food grains is considered while arriving at the bilateral agreement between the management and workers for determination of cash wages.

As per the bilateral agreement arrived between the consultative Committee of Plantation Association (CCPA) and Assam Chah Mazdoor Sangha (ACMS) the cash wage rate in the Brahmaputra Valley has been decided to be Rs. 66.50 per day. In the calculation sheet of CCPA for fixing the cash wages at Rs. 66.50, the CCPA showed the cash value of the concessional food grains given to the workers as Rs. 14.20. Along with the cash value of the concessional food grains supplied, the other statutory and non-statutory perks and benefits given to the workers are also included in the calculation sheet given by the CCPA and, it shows that in fact the cash wage of Rs. 66.50 cost to the management Rs. 137.95 when all other concessional benefits given to the workers are taken into consideration.

Therefore, all the participants agreed that the cash value of the non statutory provisions of the concessional food grains of Rs. 14.20 along with cash wage of Rs. 66.50 as shown by the CCPA which form the basis of the negotiated cash wage bilateral agreement may be taken into account of the purpose of calculation of provident fund contribution.

The meeting ended with vote of thanks from the chair.

8. After the aforesaid consensus arrived at, the impugned Annexure-L notifications, both dated 1.12.2010 came to be issued, one for the tea estates of Brahmaputra Valley and the other for Barak Valley. Referring to the bilateral agreement between the management and workers of tea gardens representatives CCPA and ACMS and CCPA, BVB and CCSU, SiLchar respectively and revising the minimum rate of wages for different Tea Estates of Brahmaputra and Barak Valley in the State of Assam. By the said notifications, it has also been provided that in addition to the rate of wages fixed as indicated therein (Rs. 66.50; 71.50; 76.50 and Rs. 55.25) per day, the workers would also get food grains as per the scale of prevailing practice, the cash equivalent of which comes to Rs. 14.20 per day. Thereafter, by the impugned Annexure-M Letter dated 14.12.2010 addressed to all the Managers of all the Tea Estates of Assam, request was made to deduct the PF contribution on the cash value of foodgrains concession at the rate fixed by the Govt. vide its Annexure-L notification dated 1.12.2010 and to deposit the same in the Board of Trustees'' account indicated therein.

9. The petitioners have challenged the aforesaid decision on various grounds. It has been contended that the term "Wages as defined u/s 2(h) of the ATPPF and

PF Scheme" includes within its fold the value of food concession and not the value of food grains. According to the petitioners, the impugned notification and circular Letter are not sustainable in Law in absence of any notification in the official gazette u/s 11(2) or 11 (3) of the Minimum Wages Act. It has also been contended that even for the purpose of estimating/determining the cash value of supplies of essential commodities, the State Govt. is required to frame appropriate rules and cannot straightway estimate the same u/s 3(1)(b) and 5(2) of the MW Act.

10. In addition to the oral arguments advanced by the Learned counsel for the petitioners, two written arguments have also been filed, which have been duly taken note of. Learned counsel for the petitioners have also placed reliance on the decision reported in 1991 Supp 2 SCC 465 (Manganese Ore (India) Ltd. Vs. Chandilal Saha and others). In support of the argument that the respondents have supplemented a reason beyond the agreement arrived at in the meeting held on 25.10.2010, the Learned counsel for the petitioners have also pressed into service the decisions reported in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, ; Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, and Nandkishore Ganesh Joshi Vs. Commissioner, Municipal Corporation of Kalyan and Dombivali and Others, .

11. Countering the above argument, Mr. A.K. Phukan, Learned AG, Assam has argued that in view of the agreement arrived at by and between the parties in the meeting held on 25.10.2010 (Annexure-K) coupled with the fact that more than 200 different gardens under the Assam Branch of India Tea Association having complied with the requirement of the impugned notifications, the instant writ petitions are not maintainable in Law. He submitted that the wages for the workers of the Tea Estates in Assam being determined through bilateral agreement between the employers and employees unions and the Govt. of Assam having considered all the aspects of the matter towards arriving at the impugned decision, the plea raised in the writ petitions is not sustainable.

12. Referring to the decisions reported in (2011) 10 SCC 727 (Employees Provident Fund Commissioner Vs. Official Liquidator of Esskay Pharmaceuticals Ltd), Maharashtra Sugar Mills Ltd. Vs. Ashru Jaiwant Tribhuvan, and D.P. Kelkar Vs. Ambadas Keshav Bajaj and Others, , he submitted that the provisions of the acts in question are required to be given Liberal and purposive interpretation keeping in view the provisions of Article 38 and 43 of the Constitution of India.

13. Mr. N. C. Das, Learned senior counsel representing the respondent No.2 ATPPF, while advancing his argument extensively referred to the counter affidavit filed by the said respondent. He submitted that since the impugned decision has been taken pursuant to the judgement in the second round of Litigation after taking into account the views of all the employers and employees and in absence of any objection thereto, it is not open for the petitioners to file the instant writ petitions taking altogether a different stand.

14. I have given my anxious consideration to the submissions made by the Learned counsel for the parties and have also perused the entire materials on record. As to what was the outcome of the first Litigation has been noted above. By the said judgment and order dated 29.1.2004, it was provided that the State Govt. being the appropriate authority under provisions of Section 2(b)(i)(ii) of the Minimum Wages Act, has to consider the recommendation of the Board of Trustees and to take a final decision in the matter. Accordingly, the matter was remanded back to the State Government for consideration and orders after due opportunity of hearing to all concerned.

15. In the second round of Litigation, certain issues were framed and the State Govt. was directed to examine and consider the same and to pass appropriate order. As to what are the issues have been noted above. The issues formulated in the order dated 12.8.2010 passed in the second round of Litigation will have to be understood in the touch stone of background facts and the judgment in the first round of Litigation. As noted above, in the first round of Litigation, direction was issued to the State Government to consider the recommendation of the Board of Trustees and then to pass appropriate orders. As to what was the recommendation in respect of deduction of PF contribution on value of food concession, has been noted above. However, it was held that such recommendations was to be considered by the State Govt., and could not have been implemented straightway by a circular issued by the Secretary of the Board of Trustees.

16. After the second round of Litigation stood concluded on 12.8.2010, a meeting was held on 25.10.2010 in which the representatives of the Government in the Labor and Employment Department and the representatives of employers and employees participated. As to what was the consensus arrived at has been noted above. It appears that similar consensus was arrived at in the meeting held on 9.6.2010 pertaining to the Tea Estates of Barak Valley in the State of Assam. While the cash wage rate in the Brahmaputra Valley has been decided as Rs. 66.50; Rs. 71.50 & Rs. 76.50 per day for the periods from 1.11.2010 to 31.3.2011; 1.4.2011 to 30.6.2012 and 1.7.2012 o 30.9.2013, it has been decided to be Rs. 55.25 per day in the Barak Valley. So far as the fixation of Rs. 14.20 per day as wage in Lieu of concessional food grains is concerned, the same is common to the Tea Estates of both the Valleys.

17. The petitioners themselves have stated in the writ petition (refer WP(C) 2682/2011) that wages payable to different plantation workers are always determined through bilateral agreement between the employers'' association and employees'' unions. As recorded in the minutes of the meeting held on 25.10.2010, a consensus was arrived at by and between the parties that the cash value of non-statutory provisions of the concessional foodgrains of Rs. 14.20 would be taken into account for the purpose of calculation of PF contribution. The parties to the said meeting having agreed to the said proposition, cannot now turn around the same so as to take a different stand

towards assailing the said minutes of the meeting and the impugned notification and the circular Letters, based on such bilateral agreement.

18. It is on record that pursuant to the aforesaid agreement arrived at, various tea gardens represented by Assam Tea Planters'' Association (ATPA); Tea Association of India (TAI) and Indian Tea Association (ITA), more than 200 gardens have complied with the impugned notification and the circular Letter, which are under challenge in this batch of writ petitions, by which benefits have been extended to over 2 Lakes of tea Labourers working in various tea gardens of Assam.

19. As a natural corollary to the impugned minutes of discussion between the parties would go to show that wages given in cash did not include cash value of food concession. Cash Value of Food Concession and Cash Value of Foodgrains bear the same meaning for the purpose of the Act as the meaning of both the terms rests in a common term i.e. eatable things.

20. Section 2(a) of the ATPPF Scheme Act, 1955 defines contribution as the deduction from the wage of an employee for deposit to the Provident Fund or Pension Fund or the Insurance Fund and the amount payable by the employer in respect of each employee to the PF or pension Fund or the Insurance Funds under the scheme. Section 2(h) defines ''Wages'' as any amount capable of being expressed in terms of money for the time being payable to an employee by the employer for works and/or in connection with a plantation and includes DA, value of food concession, amount payable for plucking, whether calculated at time or basis rates or otherwise, and leave with wages and maternity allowance or benefits but does not include (a) bonus, or (b) commission.

21. As noted above, the term ''food'' is a general term commonly used and cannot be put to any ambiguity in reference to food grains. Cash value of food concession and cash value of foodgrains bear the same meaning for the purpose of the Act as the meaning of both the terms rests in a common term as eatable things.

22. Contribution of PF under the Act of 1955 has no relevance to the fixation of wages under the provisions of the MW Act. It is only after a threadbare discussion in the impugned minutes of the meeting, the representatives of both the employers and employees unions unanimously arrived at a final conclusion that the wages given in cash did not include the cash value of food concession. All the participants unanimously agreed that the cash value of foodgrains supplied at concessional rate which is fixed at Rs. 14.20, is to be clubbed with cash wage of Rs. 66.50 for the purpose of computation of PF. In this connection, the respondent No.2 in its affidavit-in-opposition has annexed the Annexure-III Letter dated 10.6.2010 addressed to the Labour Commissioner, Govt. of Assam by Shri Dhiraj Kakati, Secretary, Assam Branch, Indian Tea Association, enclosing therewith the List of components with respective value which are taken into account to arrive at minimum wages of a daily rated workers in Assam Valley.

23. In the meeting held on 25.10.2010, it was unanimously resolved and/or determined that the cash value of foodgrains supplied at concessional rates to the workers is Rs. 14.20 per day. It was pursuant to such resolution/consensus, the Govt. of Assam in the labour and Employment department, issued the impugned notification dated 1.12.2010, exercising his power and jurisdiction u/s 3(i)(b) read with Section 5(ii) of the Minimum Wages Act.

24. In Employees PF Commissioner (Supra), the Apex Court dealing with the provisions of Employees PF and Misc. Provisions Act, 1952 and its nature and interpretation, held that it being a social welfare Legislation should be given Liberal and purposive interpretation keeping in view the provisions of Article 38 and 43 of the Constitution of India. In paragraph 22 of the said judgment, it has been observed thus :-

22. The EPF Act is a social welfare legislation intended to protect the interest of a weaker section of the society i.e. the workers employed in factories and other establishments, who have made significant contribution in economic growth of the country. The workers and other employees provide services of different kinds and ensure continuous production of goods, which are made available to the society at large. Therefore, a legislation made for their benefit must receive a liberal and purposive interpretation keeping in view the directive principles of State policy contained in Articles 38 and 43 of the Constitution.

25. Mr. A.K. Phukan, Learned AG, Assam, has referred to the two decisions of the Bombay High Court, namely, Maharashtra Sugar Mills Ltd. and D.P. Kelkar (Supra) to emphasis that concessional foodgrains of Rs. 14.20 along with cash wage may be taken into account for the purpose of calculation of PF contribution. In the said two decisions, it was held that wages would include bonus as well.

26. In the instant case, stalemate has been created due to ongoing Litigations starting from 2001. In the first round of Litigation, the only flaw found was that there was no deliberation on the part of the State Government towards implementing the decision of the Board of Trustees. The decision of the Board of Trustees was held to be recommendatory in nature and accordingly the matter was remanded back to the State Govt. for a decision taking into account the recommendation of the Board or Trustees and upon hearing all the parties. In the second round of Litigation, this Court formulating the issues indicated in its order dated 121.8.2010, directed the State Govt. to take a decision in the matter. As to what followed thereafter, has been discussed above. Almost all the parties representing the employers and the employees agreed to the rate of concessional foodgrains for the purpose of calculation of PF contribution. However, turning around the said consensus arrived at they have again approached this Court by way of this third round of Litigation.

27. Much have been argued in respect of the advice of the Minimum Wage Advisory Board constituted vide Govt. notification dated 9.11.2006 and extended form time to time, which find mention in the impugned notification dated

1.12.2010. The said Board in its meeting held on 9.6.2010 has given due cognizance to the bilateral agreement between the management and workers of different gardens represented by CCPA, BVB and CCSU towards finalization of minimum rate of wages or ordinary daily rated plantation workers in the Tea Estates of Barak Valley in the State of Assam. Apart from the fact that the recommendation of the Board was recognized in the first round of Litigation, in absence of any challenge to the Constitution of the said Board vide notification dated 9.11.2006 coupled with the fact that all the parties participated in its meeting held on 9.6.2010 to arrive at the particular consensus, it is now not open for the petitioners to make a challenge to the recommendation made by the said Board. For all the aforesaid reasons, I do not find any merit in this batch of writ petitions and accordingly they are all dismissed, without however, any order as to costs. Interim order, operating in this proceeding stands vacated.