

(1956) 08 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ Case No. 58 of 1955

N.K. Jain and Others

APPELLANT

Vs

Labour Commissioner, Rajasthan and Others

RESPONDENT

Date of Decision : 27-08-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 5(1), 9
Constitution of India, 1950 — Article 226 , 258(1)
Minimum Wages Act, 1948 — Section 20, 24

Citation : AIR 1957 Raj 35 : (1957) RLW 95

Hon'ble Judges : Wanchoo, C.J.; Dave, J

Bench : Division Bench

Advocate : Yashwant Singh and Kisturmal, for the Appellant; L.N. Chhangani, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Wanchoo, C.J.—This is an application by N. K. Jain and others on behalf of M/S Dnduwala & Co., Bhilwara (hereinafter called the applicant) under Article 226 of the Constitution against the Labour Commission, Rajasthan and others, and arises in the following circumstances.

2. Messrs Duduwala and Co. Bhilwara carry on mica mining, and manufacture and sale of mica. One of the mines exploited by it is Toonka mine, and naturally workers are employed in this mine. The Labour Inspeetor, after inspecting the mines, made an application u/s 20(2) of the Minimum Wages Act (No. XI) of 1948 (hereinafter called the Act) before the Labour Commissioner in June 1954. In that application, it was urged that the applicant had not paid wages for Sundays to the workers, and had therefore contravened Section 13 of the Act, read with Rule 23 of the Minimum Wages (Central) Rules, 1950 (here-in-after called the Rules). The Labour Inspector prayed that the applicant be directed to make payment of the wages which had not been paid to the workmen, and also to pay compensation.

The Labour Inspector also prayed that sanction should be granted for prosecuting the applicant u/s 22 of the Act. Notice was issued to the applicant of this application of the Labour Inspector, and eventually in June, 1955, the Labour Commissioner ordered the payment of wages, but did not allow any compensation. It also appeal"s that sanction to prosecute was not granted.

3. Thereupon, the present application was made to this Court against the order of the Labour Commissioner, and it is contended that the Labour Commissioner was wrong in ordering the applicant to pay the wages for weekly holidays.

4. The grounds on which the application, is based are these:

(1) that minimum wages have not been validly fixed, and the notification of 24th of March, 1952, appointing a Committee, and 29th March, 1952, fixing minimum wages, are invalid in as much as the provision of Section 9 of the Act has not been complied with;

(2) the delegation of powers by the Central Government to the Rajasthan Government under Article 258 of the Constitution is invalid as Article 258 has no application to such a case as the fixing of minimum wages is a quasi judicial function;

(3) that the minimum wages fixed arc only for mica works and not for mica mines, and that mica mines are not included in the meaning of mica works as used in the schedule of the Act, and therefore minimum wages could not be fixed for workers in mica mines.

5. The validity of the Act and in particular of Sections 5, 7 and 9 was also raised in the application; but as this point was not raised before us in arguments we need not refer to it.

6. The application has been opposed by the opposite parties. It is unnecessary to set out in detail the grounds of opposition. It is enough to say that the opposite parties contended that the three main points raised on behalf of the applicant have no force, and that the order of the Labour Commissioner is right, and should be maintained. It has also been urged that there is a remedy by way of suit and therefore this Court should not interfere in its extraordinary jurisdiction.

7. We shall first consider whether there is any remedy by way of a suit It is enough to say that we have grave doubts whether the applicant can file any suit at all against the directions given u/s 20. Section 24 bars suits, though that section does not specifically bar a suit by an employer, it seems to us that it does bar the employer from agitating the question of payment of wages once the matter has been decided u/s 20. We are, therefore, of opinion that there is no remedy to the applicant by way of a suit, and the application cannot be dismissed on this ground.

8. Then we come to the contention that there can be no delegation by the Central Government of its power under the Act relating to mines to the State

Government under Article 258 of the Constitution because the fixation of minimum wages is a quasi-judicial act. Article 258 empowers the President, with the consent of the Government of a State, to entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive powers of the Union extend.

It is urged that under this Article only matters of an executive nature can be delegated by the President to the Government of a State, and that fixation of minimum wages could not be delegated because that is a quasi judicial matter. Learned counsel for the applicant has not been able to point out any case in which it has been held that fixation of minimum wages is quasi-judicial matter. We should have thought that fixation, of minimum wages is an executive matter arising in the performance of the executive functions of the State.

It seems to us that the applicant has called fixation of minimum wages a quasi judicial matter, because that was the only way in which it could take out this function from the ambit of Article 258. It is true that a certain procedure is prescribed for fixation of minimum wage. But that in itself does not make the fixation a quasi judicial matter. We are satisfied that fixation of minimum rates of wages is an executive function, and delegation was made to the State of Rajasthan rightly under Article 258(1) of the Constitution.

9. Then we come to the question whether Mica Mines are included in the words "mica works" appearing at item 10 of Part I of the Schedule of the Act. That item is in these words "employment in any mica works". Here again learned counsel has not been able to show us how a "mica mine" is not included in the words "mica works": "Mica works", in our opinion, is a general term of widest possible import, and includes all kinds of works in relation to mica including mining.

Mines are also worked, and must be included in the general term "mica works". The contention of the applicant, therefore, that mica mines do not come within the purview of the Act at all is completely unfounded. They are clearly included within mica works mentioned in the Schedule to the Act, and the Central Government is therefore authorised to delegate the function of fixing minimum wages for mica mines also to the State of Rajasthan. There is therefore no force in this contention and it is also rejected.

10. The last point is about the notifications by which the Committee was appointed, and minimum wages fixed. The notification appointing the Committee was issued on the 24-3-1952, and published on the 27-3-1952. The notification mentioned Section 5(1)(b) of the Act, but that is clearly a mistake for Section 5(1)(a). In this notification, six members were appointed, namely the Labour Commissioner, Jaipur, who was the Chairman, though he was called Convenor in this notification, the Director of Industries & Commerce, Jaipur, the Chief Engineer, Roads & Buildings, Jaipur, the Transport Commissioner, Jaipur, the Director of Local Bodies, Jaipur, & the Mining Engineer, Jaipur. Division, Jaipur. Then followed the notification of the 20th March fixing minimum wages. The

applicant says that the Committee was not constituted as required by Section 9 of the Act, and therefore the fixation of minimum wages by the Rajasthan Government on the 29th of March was not in accordance with the Act, and is of no legal force and effect.

11. The scheme of the Act in the matter of fixation of minimum wages is this. The appropriate Government is authorised to fix minimum rate of wages in the scheduled employments u/s 3. Section 4 explains what a minimum rate of wages is. Section 5 provides for the procedure for fixing minimum wages, and there are two methods either of which can be adopted by the appropriate Government. Under the first method, a Committee is appointed to hold enquiries, and advise the Government.

Under the second method, the Government publishes their proposals for the information of persons likely to be affected thereby, and specifies a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration. Thereafter, the Government takes into consideration either the advice of the Committee appointed under Clause (a), of Section 5(1), or considers all representations received by it under Clause (b) of Section 5(1), and thereafter fixes by a notification the minimum rate of wages which comes into force on the expiry of three months from the date of its issue unless specified to come into force on some other date.

Section 6 deals with Advisory Committees and Sub-Committees, Section 7 with Advisory Boards, and Section 8 with the Central Advisory Board. Then comes Section 9 which provides for the composition of Committees, Advisory Committees, Advisory Sub-Committees and the Advisory Boards. These have to consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of the total number of members, and one of such independent persons has to be appointed the chairman.

Section 9, in our opinion, governs the composition of the Committee appointed u/s 5(1)(a) also. It is obvious that in this case Section 9 was not complied with. What the State of Rajasthan did was to compose a committee consisting of six of its officers. There was no representation of the employers or of the employees in the scheduled employments on the Committee. The Committee, therefore, which was formed in this case, and on the advice of which we presume the State Government issued the notification of the 29th of March, 1952, was not properly constituted as required by law.

12. It has been admitted that Section 9 was not strictly complied with, but it is urged that this was only an irregularity, and cannot affect the validity of fixation of wages by the Government of Rajasthan. It was also pointed out that the notification delegating the power to the Government of Rajasthan was made on the 21st of February, 1952, and there was great pressure of time, and u/s 3, as

it then stood, minimum wages had to be fixed by the 31st of March, 1952, or otherwise they could not be fixed at all, and therefore this irregularity took place.

Whatever may be the reason for the irregularity, what we have to see is whether the irregularity has affected the validity of the later notification fixing the minimum rates of wages on the 29th of March, 1952. In this connection, learned Government Advocate relies on *The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another*, . That case was also under the Minimum Wages Act.

What happened in that case was that a Committee as provided by Sections 5(a) and 9 of the Act was appointed by the State of Ajmer. The term of that Committee came to an end on the 16th of July, 1952, and was not extended till that date. Later in August 1952, there was an extension till the 20th of September, 1952, and during this extended period the Committee tendered some advice to the Government of Ajmer on the basis of which the minimum rates of wages were fixed.

The question then arose whether the procedure provided by the Act had been followed. The learned Judges held that assuming that the order of the 21st of August, 1952, could not revive a Committee which was already dead, it could certainly be held that a new Committee was constituted on that date, and even then a report submitted by it would be a perfectly good report.

It was also pointed out that a committee appointed u/s 5 of the Act was only an Advisory Committee, and that the Government was not bound to accept any of its recommendations. Consequently procedural irregularities of this nature could not vitiate the final report which fixed the minimum wages. Learned Government Advocate has urged that in this case also there was a procedural irregularity in the appointment of the advisory body, and that this irregularity could not vitiate the final notification of the State Government, which fixed the minimum wages.

We are, however, of opinion that there are irregularities and irregularities, and sometimes an irregularity may be such as not to vitiate the final notification fixing the minimum, rate of wages. At other times, however, the irregularity may be of a fundamental character, and may vitiate the final order.

It is well settled that the words used in a judgment have to be read in the context in which they were used, and if we read the words on which the learned Government Advocate relies in the context in which they were used by the Supreme Court, it is obvious that a minor irregularity of the nature with which the Supreme Court was dealing in the case would not vitiate the final order; but it does not follow from this that whatever the nature of the irregularity there will be no vitiation of the final order.

13. Let us look at the nature of the irregularity in this case. Section 9 says that the committee will consist of an equal number of the representatives of employers and employees in the scheduled employment and independent

persons not exceeding one-third of the total membership. In this case, there was no representation of the employer or the employees. We may assume that all the six members appointed were independent persons.

There was thus no Committee constituted under the Act, and the State Government has fixed minimum wages without the advice of the Committee, and without taking the alternative procedure mentioned in Section 5(1)(b). Can it be said in such circumstances that the final order fixing the minimum rate of wages is valid, though it has been made after completely ignoring the provision of Section 5(1).

We are of opinion that where the provision of Section 5(1) has not been followed at all, it is not open to the State Government to fix minimum wages, and any order fixing minimum rates of wages without following the provisions of Section 5 (1) is of no force and effect.

14. We may in this connection refer to *Bijay Cotton Mills Ltd. Vs. The State of Ajmer*, In that case, the validity of the Minimum Wages Act was attacked, and it was urged that the whole Act was illegal in view of the provisions of the Constitution,

The learned Judges held that the material provisions of the Act were not illegal and ultra vires, as the restrictions imposed by them, though they interfered to some extent with the freedom of trade or business guaranteed under Article 19(1)(g) of the Constitution, were reasonable, and being imposed in the interest of the general public were protected by the terms of Clause (6) of Article 19. At page 35 occur the following observations :

"As regards the procedure for the fixing of minimum wages, the "appropriate Government" has undoubtedly been given very large powers. But it has to take into consideration, before fixing wages, the advice of the committee if one is appointed, or the representations on its proposals made by persons who are likely to be affected thereby."

The Supreme Court held the Act valid because of the provision, among others, which required the State Government, before fixing minimum wages, to take into account the advice of the Committee or the representations on its proposals. If this provision and similar provisions relating to consultation with Advisory bodies had not been made obligatory, the Act would, in all probability, have been struck down.

Therefore, obtaining the advice of the committee u/s 5(1)(a), or consideration of representations on the proposals of the State Government is the sine qua non of the fixation of minimum rates of wages by the State Government. If the State Government were to proceed to fix minimum wages without appointing a committee u/s 5(1)(a), or without publishing its proposals and inviting the representations and considering them, and further if the State Government were to revise the minimum rates of wages without consultation with advisory bodies

provided in other sections of the Act, the notification fixing minimum rates of wages or revising them would, in our opinion, be clearly against the basic provisions of the Act, and would have no force and validity.

In this case, the State Government did appoint a committee, but it was no committee within the meaning of Section 9 of the Act. There was no representation of the employers or the employees in the scheduled employments on that committee. In effect therefore though there was in name a committee, in reality there was none.

The State Government's notification, therefore, of the 29th of March, 1952, fixing minimum rate of wages was in effect made without consulting the committee, and without publishing its proposals and obtaining representations on them and considering those representations. In these circumstances, the notification dated 29th March, 1952, fixing minimum rates of wages in certain scheduled employments including mica mines is of no force and effect.

15. It has been urged that the applicant in any case, is not entitled for any relief from us, firstly because he came late, and secondly because when the Labour Inspector had pointed out that the applicant had not paid wages for weekly holidays, the applicant in its reply admitted that it would do so in future. This happened in November, 1953, and in spite of that the applicant again did not pay wages for weekly holidays in December, 1953.

So far the delay is concerned, the applicant said that it never thought that the notification applied to it as it did not specifically mention mica mines but only mentioned mica works which it thought were different from mica mines. As for its saying in November, 1953, that it would pay wages for the weekly holidays, the applicant's reply is that when it received the letter from the Labour Inspector, it looked up Rule 23 of the rules which provide for a weekly day of rest with wages paid for that day, and wrote back that it would also pay in future.

Thereafter it consulted legal opinion and it was then advised that as minimum wages had never been legally fixed in Rajasthan, the obligation to pay for a weekly holiday did not arise at all, for u/s 13 of the Act such obligation only arose after the minimum rate of wages had been fixed.

If this were the only case of its kind, we might not have interfered in favour of the applicant, as in this case the applicant has only been ordered to pay the wages and has not been ordered to be prosecuted or made to pay any compensation. But we understand that this is a test case, and other cases are pending in the criminal courts in Bhilwara and have been stayed pending decision of this application.

In these circumstances, we have to decide about the validity of the notification of the 29th of March, 1952, fixing minimum rates of wages. Once we have decided that question, and have held that the notification is not valid, it follows that the order of the Labour Commissioner dated the 25th of June, 1955, which is in

dispute before us, cannot be sustained. We, are, therefore, bound to give effect to the result even in the case of the applicant.

16. It is a matter of regret that we have to strike down this notification fixing minimum wages. It may be that the State of Rajasthan had very little time after the delegation of powers to it on the 21st of February, 1952, to fix minimum wages after going through the procedure prescribed in Section 5(1). But we understand that later the date 31st March, 1952, was changed to 31st March, 1954.

It was, therefore, possible for the State of Rajasthan, even if the original order was not in accordance with law to take steps later, and appoint another committee in accordance with Section 9, or to publish its proposals u/s 5(1)(b) and fix rates of wages. We regret that now even the 31st March, 1954, has gone, and it will not be possible to fix minimum rates of wages without a change in the Act.

But the facts being, what they are, we have no option but to declare that the notification dated 29th of March, 1952, fixing minimum rates of wages has no force and effect, and therefore the Labour Commissioner's order which is in dispute in this case must be set aside.

17. We may finally in passing point out one circumstance. The notification of the 29th March, 1952, fixes the rate of wages at Rs. 30/- per month or Rs. 1/2/- per day for 26 days in a month, which comes to Rs. 29/4/- in all. This would seem to suggest that the State of Rajasthan, when it fixed the minimum rates of wages, had already taken into account the practice which might have been prevalent in Rajasthan of not paying for the weekly holiday, and therefore, where the payment was on a daily basis, fixed a higher daily rate than would be justified under the monthly rate which it was prescribing. If this assumption of ours is correct, then it would have to be said that the workers, who would be paid Rs. 1/2/- at the daily wage rate for 26 days in a month, have not suffered. It seems as if Rule 23 of the rules was not in the mind of the State of Rajasthan when the notification of the 29th of March, 1952, was issued.

Be that as it may, we have come to the conclusion in this case that the committee appointed by the State of Rajasthan was not in accordance with law, and therefore the notification dated 29th of March, 1952, was issued by it without consultation with a committee as required by law, and is therefore of no force and effect.

18. We, therefore, allow the application, and set aside the order of the Labour Commissioner dated 25th of June, 1952. In view however of the conduct of the applicant in coming late to us, and in writing to the Labour Inspector in November, 1953, that it would pay in future, we order parties to Bear their own costs.