

(1993) 01 AHC CK 0037
In the Allahabad High Court
Case No : C.M.W.P. No. 22661 of 1991

Rafique and Sons and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-01-1993

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 3

Citation : (1993) 2 LLJ 137

Hon'ble Judges : R.B. Mehrotra, J

Bench : Single Bench

Advocate : V.R. Agrawal, for the Appellant; Raj. K. Jain and M.A. Qadeer, S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.B. Mehrotra, J.—A notification dated June 21, 1991 was published in the U.P. Gazette of the same date. The notification recites as under:

"Whereas the State Government had vide its notification No. 6790 (ST) XXXVI-1-1006 (ST) 89, dated November 21, 1989 revised and fixed the minimum rates of wages for employees employed in the employment in Bidi Making in Uttar Pradesh;

And whereas, the employees engaged in Bidi making industry had been demanding the revision of minimum wages due to rise in prices and upwards revision in other employments.

And whereas, the Uttar Pradesh Bidi Maz-door Unions operating Bidi industry served notices on the State Government indicating that if the minimum rates of wages of the employees employed in the employment of Bidi industry were not revised they would start agitation;

And, whereas, in the opinion of the State Government it is necessary and expedient to revise the minimum rates of wages for employees employed in the

employment in Bidi making with a view to securing public convenience and maintenance of public order and for maintaining employment;

Now, therefore, in exercise of the powers under Clause (b) of Section 3 of the U.P. Industrial Disputes Act, 1947 (UP. Act No. XXXVIII of 1947), the Governor is pleased to make the following order and u/s 19 of the said Act to direct that the notice of this order shall be given by publication in the Gazette.

ORDER

1. The various categories of employees employed in the Bidi making industry shall be paid minimum rates of wages as specified in column 2 of the Schedule given below with effect from the date of publication of this notification in the Gazette.

SCHEDULE

Class of employees

Revised rates of minimum wages.

1

2

1.

Bidi Rolling

Rs.200 per thousand Bidis rolled provided that where the employee earns less than Rs. 140-00 per week at this rate, he shall be paid at least Rs. 120.00 per week subject to the conditions specified in the Annexure to this order.

2.

Pasting of slips

Rs. 200 per thousand

3.

For wrapping, pasting of labels and making bundles of one lakh of Bidis-when one bundle contains 25 bidis

Rs. 46.50

when one bundle contains 24 bidis

Rs. 49.10

when one bundle contains 20 bidis

Rs. 51.40

when one bundle contains 12 bidis

Rs. 63.10

when one bundle contains 10 bidis

Rs. 71.40

when one bundle contains 8 bidis

Rs. 86.25

when one bundle contains 7 bidis

Rs. 92.50

4.

For stores and examiners of bidis

Rs. 796.00 per month

5.

For loading and unloading on/from trucks and packing bidis in sacks and for chaukidars, sweepers and other unskilled employees.

Rs. 676.00 per month

6.

Furnace Man (Baking of bidis)

Rs. 796.00 per month

7.

Maxing of tobacco

Rs. 707.00 per month

8.

Jal Fillers

Rs. 707.00 per month

9.

Clerical

Rs. 1083.00 per month

(a) head munim, head clerk, head cashier, head store keeper, senior clerk, accountant, stenographer.

(b) Clerk, typist, assistant accountant, junior accountant, cashier store keeper, munim

Rs. 239.00 per month

10.

Drivers.

(a) Drivers of heavy vehicles

Rs.903.00 per month

(b) Drivers of light vehicles

Rs. 849.00 per month

2. The above rates of wages shall not in any way, operate to the prejudice of any employee, if the rates prevailing before coming into force of these rates are higher, the same shall be continued to be paid and the employer shall not reduce them.

3. The rates of wages given in this order shall also be admissible to contract labour.

4. The daily rates of wages shall be equal to $1/26$ of the monthly rates.

5. The wages per hour shall not be less than $1/6$ of the daily wages.

ANNEXURE

1. The employee shall be entitled to get at least Rs. 120.00 per week (hereinafter referred to as the guaranteed wages) only, where the employer fails to supply sufficient quantity of good raw material (including tobacco leaves) to roll, 5,600 bidis per week.

2. The guaranteed wages shall be inclusive of the wages for any day earned by the employee in respect of Bidi actually rolled by him with the quantity of raw material supplied to him by the employer.

3. The employee shall not be entitled to get guaranteed wages if he earns less than the amount of guaranteed wages on any day on account of his unwillingness to work for any reasons, whatsoever be.

4. The employee shall not be entitled to get the guaranteed wages if he fails to make full use of the raw material supplied to him even if the raw material so supplied is not sufficient for rolling 800 bidis per day.

5. The employee who works for more than one employer shall not be entitled to get the guaranteed wages from any one of the employer.

6. The employee shall not be entitled to get the guaranteed wages if the failure of the employer to supply raw material is due to fire, catastrophe, epidemic, civil commotion or other similar causes which are beyond his control.

7. This order shall remain in force for a period of two years from the date of its publication in the Gazette unless rescinded or replaced by another order.

By order, Moninder Singh/Sachiv"

2. In both the aforesaid writ petitions, the aforesaid notification issued u/s 3(b) of the U.P. Industrial Disputes Act has been challenged. In both the writ petitions the same point is involved. As such, both the writ petitions have been consolidated and have been heard together.

3. In Writ Petition No. 22661, the Court granted the following interim order:

"Issue notice.

Operation of the notification dated June 21, 1991 contained in Annexure "1" to the writ petition in so far as the petitioners are concerned, shall remain stayed till further orders of this Court. It shall be open to the contesting respondents to seek reconsideration of the interim order before the appropriate Bench after the counter- affidavit by all the respondents have been filed. Learned counsel for the petitioners made a statement at the Bar that the petitioners undertake that if eventually the writ petition fails, the petitioners shall pay within a month of the dismissal of the writ petition the difference in the existing wage and wages required to be paid under the impugned notification to the workers concerned.

Dated August 28, 1991 Sd. R.K.G."

However, in Writ Petition No. 27670 of 1991, the Court stayed the operation of the notification until further orders of the Court without imposing any condition. In the interim order passed by the Court in M/s. Kaley Khan's writ petition (supra) the Court did not impose any condition nor asked the petitioner to give any undertaking. A blanket interim order staying the operation of the notification dated June 21, 1991 was passed.

4. Since the counter and rejoinder affidavits have been exchanged in Writ Petition No. 22661 of 1991, the said case is being treated as a leading case in the matter.

5. An application on behalf of U.P. Bidi Mazdoor Federation through the Secretary was moved on behalf of the Union of Bidi Workers for being impleaded as respondent No. 4. The said application was allowed by the Court, vide its order dated August 12, 1991. Subsequently another application was moved on behalf of Allahabad Bidi Karmchari Union, Allahabad wherein it was prayed that since the respondent No. 4, namely, U.P. Bidi Mazdoor Federation has been de-registered and new Union, Allaha-bad Bidi Karmchari Union has been registered, the name of the respondent No. 4 U.P. Bidi Mazdoor Federation may be deleted from the array of the parties and in its place Allahabad Bidi Karmachari Union may be impleaded as respondent No. 4 in the writ petition. On the aforesaid application, time was granted to the petitioner's counsel for filing counter affidavit but no counter-affidavit has been filed. Subsequently, another application was moved on behalf of Allahabad Ridi Karmachari Union for being impleaded as respondent No. 4 in the writ petition. The aforesaid application has been allowed by the Court, vide its order dated August 12, 1991 and the

Allahabad Karmchari Union has been impleaded as respondent No. 4 in the writ petition.

6. I have heard Sri. V.R. Agrawal, learned counsel for the petitioners in support of the writ petition, Sri Raj Kumar Jain for newly added respondent Allahabad Bidi Karmchari Union and the learned Standing Counsel for respondent Nos. 1 to 3 in opposition of the writ petition defending the notification dated June 21, 1991.

7. The petitioners who are manufacturers of Bidi have challenged the aforesaid notification on the following grounds:

(a) The conditions precedent for issuing the Notification u/s 3 of the Act were non-existent;

(b) None of the three objectives namely (i) securing public convenience;(ii) maintenance of public order; and (iii) maintaining employment, sought to be achieved, could be achieved by the Notification.

(c) No opportunity of hearing was given to the employers including the petitioners before the issuance of the impugned Notification and as such the Notification was issued in violation of principles of natural justice.

(d) The increase given to the workers in the impugned Notification is about 33% of their existing wages which is highly exorbitant and cannot be absorbed by the industry.

(e) The Notification was issued on June 21, 1991 when the State Government was only a care-taker Government. Elections had already taken place and results were declared and the new Government took oath on June 23, 1991. The Notification is politically motivated.

(f) The wages in Bidi industry were required to be fixed or revised on the basis of All India Zones fixed by the Labour Ministers of the Country, Labour Secretaries and even the tripartite Committee of the State consisting of representatives of employer, workman and the State, and lastly,

(g) The impugned Notification is so unreasonable and unfair that it amounts to unreasonable restriction on the petitioner's right to practice any profession or to carry on any occupation, trade or business under Article 19(1)(g) of the Constitution of India and is not saved by Sub-article 6 of Article 19 of the Constitution of India.

8. Two counter-affidavits have been filed on behalf of Respondents 1 to 3. Sri Behari Lal, Joint Secretary, Labour Department filed counter-affidavit on behalf of the State Government and Sri. J.S.P. Pandey, Additional Labour Commissioner, U.P. Kanpur looking after the work of enforcement of Labour Laws including fixation and revision of minimum rates of wages in scheduled employees as also their enforcement in the State of Uttar Pradesh filed counter-affidavit on behalf of Respondent No. 2 and 3. In counter-affidavit of Sri Behari Lal, it has been stated that the employees engaged in Bidi making industry have been

demanding revision of minimum wages due to rise in the prices and upward revisions of wages in other employments. There has been a rise of 132 index point in All India Consumer Price Index Number in the last 21 months, when the earlier notification was issued in November, 1989 and because no dearness allowance was payable, revision became necessary to neutralise the erosion in real earning of Bidi employees. The Bidi Mazdoor Union also served notices on the State Government requesting for the revision of the rates of wages. For illustration two such notices have been annexed with the counter- affidavit. In one of such notice Allahabad Bidi Karamchari Union has demanded, that the rate of wages of Bidi manufacturing should be raised to Rs. 25/- per thousand. It was threatened in the aforesaid notice that if the demands are not fulfilled, the workers will be forced to start agitation for fulfilling the aforesaid demands. Another similar notice was served by Bidi workers Union, Rampur. These notices have been filed only as an illustration for showing that the Bidi Workers of the State are demanding higher wages and are threatening agitation in case of failure to accept these demands. In this counter affidavit, it has also been stated that another consideration which weighed in the mind of the State Government was that the wages promulgated in agricultural operation and other rural employment were raised upto Rs. 18 to Rs. 20, per day. It was further stated in the counter affidavit that the State Government was of the opinion that it was necessary and expedient to revise the minimum rates of wages for Bidi workers of the State for securing public convenience, maintenance of public order and maintaining employment.

9. In the second counter-affidavit filed by Sri. J.S.P. Pandey, Additional Labour Commissioner, U.P. Kanpur on behalf of the respondent Nos. 2 and 3 i.e. Labour Commissioner and Deputy Labour Commissioner, a detailed background has been given regarding the conditions of Bidi workers in the State of U.P. and regarding the back ground under which the impugned notification was issued. In this counter-affidavit, it has been stated that Bidi making is one of the scheduled employments covered under the schedule to Minimum Wages Act, 90% of the Bidi Rollers work at dwelling places. There are nearly 3800 industrial premises licensed u/s 3 of Bidi and Cigar Workers (Conditions of Employment) Act, 1966 in which 87,000 employees are working. Nearly four lacs Bidi rollers including children and women work at their dwelling places and it is difficult to enforce the provisions of the aforesaid Act. It is also difficult to guarantee them the minimum wages because no record is kept in respect of these Bidi Rollers with the principal employers because of some lacuna in Bidi and Cigar Workers (Conditions of Employment) Act, 1966. There is a lot of exploitation of Bidi workers, as apparently low wages to women employees and no wages at all to the children who roll bidis to help their parents at the dwelling places are given. There has been a practice of entering into settlements with the intermediaries by the principal employers by showing that the principal employers are offering a little more to these intermediaries than the prescribed rates of minimum wages to be given to the bidi rollers and by that they try to establish that they have ensured

payment of minimum rates of wages to bidi rollers working at their dwelling places. There has also been a practice of rejecting bidis to a large extent even beyond 5% limit fixed under Rule 29 of U.P. Bid and Cigar Workers (Conditions of Employment) Rules, 1969. For mitigating these exploitation a little higher minimum rates of wages as compared to Madhya Pradesh has been fixed so that the Bidi Rollers working at their dwelling places even after the malpractices quoted above are able to get reasonable emoluments for their work and they may be kept above poverty line.

10. The counter affidavit further states that it was resolved in the Labour Ministers' Conference that in such employment where minimum rates of wages could not be pegged with cost of living index so that erosion in the basic rates minimum wages may be supplemented by payment of D.A., attempt was made to revise minimum rates of wages in employment in Bidi making either within two years or when an increase of at least 50 index points was registered in the price index. During January to June 1989 the average index of All-India Consumer Price Index Number worked out to be 823 which was taken into consideration for issuance of Notification dated November 21, 1989 and that for the period July to December 1990 was worked out to be 955 with a minimum difference of 132 index points, which necessitated revision of minimum wages under the impugned Notification.

11. The allegations of mala fides made in the writ petition against the State Government for issuing the Notification of June 21, 1991 to embarrass the incoming Government have been specifically denied in the counter-affidavit and it has been stated that the demand of Bidi workers was pending for the last many months and the State Government issued the Notification considering the urgency of the situation. Likewise the counter-affidavit also explains the circumstances under which different rates of wages have been fixed in the State of Uttar Pradesh than prevailing in the State of Bihar and Madhya Pradesh. In paragraph 10 of this counter-affidavit, it has been stated that the minimum rates of wages promulgated by the impugned Notification do not have element of special allowance which varies with the cost of living which is the practice in other States. Any comparison of minimum rates of wages prevailing in the adjoining States is to be made with the basic rate promulgated under the impugned notification of Uttar Pradesh and those prevailing in other States alongwith VDA which is the practice in other States except Uttar Pradesh for the reasons indicated in this affidavit. The counter-affidavit says that the petitioners have failed to bring on record the exact rates of wages alongwith VDA prevailing in other States.

12. In State of Uttar Pradesh and Others Vs. Basti Sugar Mills Co., Ltd., Constitution Bench of the Hon'ble Supreme Court held: pp. 225-226

"The opening words of Section 3 themselves indicate that the provisions thereof are to be availed of in an emergency. It is true that even a reference to an arbitrator or a conciliator could be made only if there is an emergency. But then

an emergency may be acute. Such an emergency may necessitate the exercise of powers under Clause (b) and a mere resort to those under Clause (d) may be inadequate to meet this situation. Whether to resort to one provision or other must depend upon the subjective satisfaction of the State Government upon which powers to act u/s 3 have been conferred by the legislature."

"Similarly the fact that action was taken by the Government in an emergency in the public interest would be a complete answer to the argument that action is violative of the provisions of Article 19(1)(g). The restriction placed upon the employer by such an order is only a temporary one and having been placed in the public interest would fall under Clause (6) of Article 19 of the Constitution."

13. In *Laxmi Trading Company v. State of Uttar Pradesh* 1973 ALJ 486, a Division Bench of this Court held:

"In *Swadeshi Cotton Mills Co. Ltd. v. State Industrial Tribunal* the Supreme Court has ruled that where the notification recites the condition precedent the burden is upon the challenger to prove that the recital is on facts incorrect.

In order to exercise power under Clause (b) of Section 3 it is not necessary that the State Government must have in view a permanent solution of the industrial dispute if any. The power is exercised to tide over an emergent situation. The power can validly be exercised even though the action under Clause (b) of Section 3 may result in the solution of the industrial dispute for the time being."

14. Sri. V.R. Agrawal learned counsel for the petitioners has submitted that since the impugned notification violates petitioners' fundamental right guaranteed under Article 19(1)(g), as such, the burden was on the State Government to prove that the restriction placed on the trade was reasonable. The State Government has failed to discharge the said burden and notification is liable to be struck down on the ground that it is violative of Article 19(1)(g) of the Constitution of India. Sri Agrawal relied upon the case of *Virajlal Manilal and Co. and Others Vs. State of Madhya Pradesh and Others*, , for the said proposition.

15. The argument cannot be sustained. In *State of U.P. v. Basti Sugar Mills*, (supra) it has been held, that a notification issued u/s 3 (b) of U.P. Industrial Disputes Act does not infringe fundamental right guaranteed under Article 19(1) (g) of the Constitution. As such petitioners' fundamental right cannot be said to have been violated. Besides that in the present case the respondents have justified issuance of notification u/s 3(b) of U.P. Industrial Disputes Act and the alleged restrictions on the trade, if any, are reasonable.

16. The second submission of Sri Agrawal is that the principles of natural justice requires that the State Government should have given an opportunity to the employers of being heard before issuing notification u/s 3(b) of U.P. Industrial Disputes Act. Sri Agrawal has relied upon a recent decision of the Supreme Court for the aforesaid proposition. The *Scheduled Caste and Weaker Section Welfare Association (Regd.) and others Vs. State of Karnataka and others*, , wherein

the Hon''ble Supreme Court has held that before declaring an area to be a slum area u/s 3 or an area as a Clearance area u/s 9 or before taking action u/s 10, the effected persons must be heard. It was a case where the notification for bringing a particular area under Slum Clearance Act was to be made. The court held that the affected persons must be heard. Here in the present case it is settled that the notification u/s 3(b) is an emergent and temporary measure and notification is issued to meet a particular situation by way of an interim arrangement. In such a situation it cannot be said that the principles of natural justice are attracted even for meeting emergent situation for making interim arrangement. The decision relied upon by Sri Agrawal is not applicable to the present case. This submission also fails and is rejected.

17. The third submission of the petitioners'' counsel that the action of the State Government was mala fide and the notification was issued by a care-taker Government to embarrass the incoming Government has been categorically denied in the counter affidavit and the incoming Government is defending the notification issued by the care-taker Government. A clear stand has been taken in the counter-affidavit wherein it has been stated that the notification was issued bonafide to meet an emergent situation. In view of this stand in the counter- affidavit the allegations of mala fide cannot succeed and are accordingly rejected.

18. So far as the petitioners'' submission regarding non-existence of the conditions existing for issuance of notification and non-fulfillment of the objective sought to be achieved in the notification is concerned, the recital in the notification is sufficient to show the existence of the circumstances necessary for issuance of notification and the objectives sought to be achieved. In the present writ petition no material has been placed on the record to show that those grounds did not exist On the other hand in the counter-affidavit sufficient material has been placed on the record to establish that the situation demanded action for meeting long standing demand of 4,87,000 Bidi workers of the State of Uttar Pradesh and a strike or an agitation by such a large number of workers would definitely have brought into jeopardy the maintenance of public order, besides issue of notification was necessary for securing public convenience and maintaining employment. In view of the decision of the Supreme Court in Swadeshi Cotton Mills Company case (supra), where the notification recites the conditions precedent, the burden is upon the challenger to prove that recital is on facts incorrect. The burden was on the petitioners to prove that the grounds did not exist or will fail to achieve the objectives sought to be achieved. The petitioners have utterly failed to prove the same. The ground of challenge to the notification on this count also fails and is rejected.

19. The last submission of Sri Agrawal is that wages of Bidi workers of Uttar Pradesh should be kept at par with the wages being given to the bidi workers in Madhya Pradesh and Bihar, otherwise it will result in migration of industry from Uttar Pradesh to Madhya Pradesh and Bihar. Further submission in this

connection is that to cover up this type of difficulties several deliberations were done on all-India basis in order to formulate a policy by which there may not be deep disparity in the wages of Bidi workers in the neighbouring States. In 1983 a tripartite committee was formed by the State Government and decision was taken that as far as Bidi industry was concerned Uttar Pradesh, Madhya Pradesh and Bihar formed one Zone and the wages in this zone should be the same or nearly the same. This matter was again considered in the State Labour Secretaries meeting as well as in the Labour Ministers' Conference held in April and May 1987. In the light of the conclusion arrived at in these meetings guidelines were finalised and the same were circulated by the Joint Secretary, Ministry of Labour, Government of India through its Government Order dated July 24, 1987. The impugned notification runs contrary to the decision taken in the tripartite meeting and the guidelines. As such, the same is liable to be struck down on the basis of being arbitrary.

20. In *Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another*, the Constitution Bench of the Supreme Court confirming an earlier decision of the Supreme Court held that: p. 411-para-16

"The fixation of minimum wages depends on the prevailing economic conditions, the cost of living in a place, the nature of the work to be performed and the conditions in which the work is performed. The contention that it was impermissible for the Government to divide the State into several Zones is opposed to Section 3 (3) as well as to the Scheme of the Act."

21. In the counter-affidavit it has been stated that different conditions of Bidi workers were prevailing in the State of Madhya Pradesh as in Madhya Pradesh the Bidi workers were provided with D.A. which was not provided in the State of Uttar Pradesh besides other factors being there it was not impermissible in law for the State of Uttar Pradesh to have fixed different wages for its Bidi workers than prevailing in the State of Madhya Pradesh.

22. In *Ministry of Labour and Rehabilitation and Another Vs. Tiffin's Barytes Asbestos and Paints Ltd. and Another*, the Hon'ble Supreme Court held : (p-415)

"A notification fixing minimum wages, in a country where wages are already minimal, should not be interfered with under Article 226 except on the most substantial of grounds. The legislation is a social welfare legislation undertaken to further the Directive Principles of State Policy and action taken pursuant to it cannot be struck down on mere technicalities."

23. In *M.K. Madhavan and Ors. v. The State of Kerala* 1968 LIC 437 the Kerala High Court took a view that fixing of minimum wages higher than those fixed in the neighbouring State of Madhya Pradesh and Mysore which compete in the markets in Kerala will result to kill Bidi Industry in the State is an important consideration which the appropriate Government must bear in mind in fixing minimum wages but the same is not justifiable and in any case not violative of Article 14 of the Constitution of India.

24. In view of the above decisions it is clear that the fixation of minimum wages of Bidi workers in the State of U.P. in the background of prevailing inflation and high prices should not be interfered with, particularly when the said decision has been taken only as a temporary measure to meet the emergent situation arising out in the State. No substantial ground has been made out by the petitioners for interfering with the aforesaid notification.

25. All the submissions made by the petitioners have failed. No ground is made out for interfering with the impugned notification issued u/s 3 (b) of the U.P. Industrial Disputes Act.

26. The writ petitions accordingly fail and is rejected with costs.

The petitioners of the Writ Petition No. 22661 of 1991 are directed to pay within one month the difference in existing wages and the wages required to be paid under the impugned notification as per their undertaking, incorporated in Court's order dated August 28, 1991.