

(1989) 03 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 208 of 1988

Sahdeo Sahu

APPELLANT

Vs

State M.P. and Another

RESPONDENT

Date of Decision : 10-03-1989

Acts Referred:

General Clauses Act, 1897 — Section 21

Minimum Wages Act, 1948 — Section 3, 3(1), 3(1A)

Citation : (1990) 60 FLR 189 : (1990) ILR (MP) 18 : (1989) JLJ 584 : (1990) 2 LLJ 402 : (1989) MPJR 555 : (1989) MPLJ 604

Hon'ble Judges : S. Awasthy, J;B.C. Verma, J

Bench : Division Bench

Advocate : A.D. Deoras, for the Appellant; Rama Gupta, Dy. A.G., for the Respondent

Judgement

B.C. Verma, J.

This petition by a social worker concerned with the welfare of the labourers in Chhattisgarh region of this State has been filed with a view to prevent exploitation of labourers engaged in business of lac manufactory in that region and particularly in Dhamtari Tahsil of Raipur District. It appears that the petitioner found that the poor labourers employed by the manufacturers of lac are being paid very low wages and are subjected to forced labour. He appears to have been moved by the low wages paid to these labourers and, therefore, has moved this petition to safeguard the interests of labourers thus victimised by the rich lac manufacturers. The contention is that though lac manufactory is a scheduled employment under the Minimum Wages Act, still minimum wages have not been fixed in this lac industry. Only Rs. 4.00 per day is paid to the unskilled labour, while the skilled labour is paid Rs.7.60 paise per day. Apart from alleging violation of Article 14 of the Constitution of India in not fixing minimum wages for this industry, it is also urged that the respondents have failed in their duties to protect the fundamental right to live, of labourers employed in lac industry as guaranteed to them under Article 21 of the Constitution. Prayer, therefore, is for

a direction to the respondents to fix minimum wages for workers engaged in lac industry.

The object of the Minimum Wages Act, 1948 apparently is to prevent exploitation of workers. This objective is sought to be achieved by fixation of minimum wages which an employer must pay. This statutory fixation of minimum wages is rightly justified on the ground that the workers' organisations are poorly developed and consequently their bargaining power is also poor. The various provisions under the Minimum Wages Act are, therefore, aimed at securing this objective of preventing the workers from exploitation and to secure to them an adequate return for their labour. The appropriate Government under the Act, therefore, has been given power to fix minimum rates of wages to the employees in a given employment. Section 3 of the Act provides that the appropriate Government under the Act in the given manner shall fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification u/s 27. The appropriate Government is also obliged to review at such intervals as it may think fit not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates, if necessary. Employment in the lac manufactory is a scheduled employment included in Part I of the Schedule. It is, therefore, mandatory for the appropriate Government to fix the minimum rates of wages for employees in that manufactory. Minimum wages for this lac industry were fixed vide Notification No. 600-390-23, dated 8th March 1951 and by yet another Notification No. 569- 451-23, dated 23rd February 1956. However, vide notification dated 20th February 1965 (Annexure R-1). the aforesaid two notifications were rescinded for the reason that the strength of the employees in this industry was reduced to less than one thousand. This, says the learned Deputy Advocate General appearing for the State, is permissible in terms of Section 3(1A) of the Act which runs as follows:

"(1-A) Notwithstanding anything contained in Sub-section (1), the appropriate Government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than one thousand employees engaged in such employment, but if at any time, the appropriate Government comes to a finding after such inquiry as it may make or cause to be made in this behalf that the number of employees in any scheduled employment in respect of which it has refrained from fixing minimum rates of wages has risen to one thousand or more, it shall fix minimum rates of wages payable to employees in such employment as soon as may be after such finding."

The above Section 3(1A) is in two parts. It starts with a non-obstante clause and the first part permits the appropriate Government to refrain from fixing minimum rates of wages as is required by Sub-section (1) of Section 3 in case in a given scheduled employment, the strength of employees in the whole State is less than one thousand. Thus, despite the mandatory provision contained in Section 3(1), the appropriate Government still may refrain from fixing minimum rates of wages

provided the number of employees engaged in the industry in the whole of State is less than one thousand. The second part of this sub-section empowers the appropriate Government at any time to survey the strength of employees in a scheduled employment in respect of which minimum rates of wages have not been fixed and if the strength is found to be one thousand or above, the appropriate Government shall fix minimum rates of wages for that employment. It is, therefore, clear that the power is given to the appropriate Government to refrain from fixing minimum rates of wages in respect of a scheduled employment despite the obligation created in terms of Section 3(1) provided of course the strength of employees in a given scheduled employment is less than one thousand. Shri Deoras, learned counsel for the petitioner, argues the once the appropriate Government fixes the minimum rates of wages in a scheduled employment, terms of Section 3(1A) do not permit the appropriate Government to rescind the fixation of those wages even if the strength in the scheduled employment falls below one thousand. This, argues the learned counsel, is because of absence of any provision in that regard in Section 3(1A). We, however, find ourselves unable to agree with this contention.

The employees in a scheduled employment do have a right to get the minimum rates of wages fixed in respect of scheduled employment since, as we have seen above, the provisions of Section 3(1) cast a duty upon the appropriate Government to fix up the minimum wages. If minimum wages are not so fixed, the right can be enforced. The appropriate Government, however, can defend such an action for not fixing minimum rates of wages by showing that the number of employees in the given scheduled employment is less than one thousand and, therefore, it has refrained from fixing the minimum rates of wages. If it can be shown that the number of employees is one thousand and above, the action must succeed and minimum rates of wages have to be fixed and the appropriate Government, however, must be permitted to refrain from fixing the minimum rates of wages if it can be shown that the number of employees is less than one thousand. All the same, the terms of Section 3(1A) does not prevent the appropriate Government from fixing the minimum rates of wages even if the number of employees in that scheduled employment is less than one thousand. A reading of the entire section only shows that where the number of employees in that scheduled employment is one thousand or more, minimum rate of wages have to be fixed, but where the number of employees is less than one thousand, the minimum rates of wages may be fixed or may not be fixed. Once such power is conceded, and indeed in view of Section 3(1A) it has to be, the provision must be interpreted in such a manner that it does not deprive the appropriate Government of such jurisdiction. The word "refrain" in Section 3(1A) must, therefore be interpreted in this light. When so read, it must mean as including jurisdiction to withdraw the minimum rates of wages earlier fixed. This word comes from Latin word "reference" which means to check or curb (desire). It means to abstain, restrain oneself, keep oneself, hold off, desist, stay one's hand, curb oneself, forbear, forgo, renounce, eschew and avoid. Thus, when the

appropriate Government is permitted to refrain from fixing minimum rates of wages, it must reasonably mean to empower the appropriate Government to withhold fixation of minimum wages when the strength of the employees in a scheduled employment falls down below one thousand. Such power can well be exercised by rescinding any notification made earlier fixing the minimum rates of wages at the time when the number of employees in a scheduled employment was one thousand or more. It is, therefore, difficult to agree with the contention raised by the learned counsel for petitioner that once minimum rates of wages are fixed, the power stands exhausted and the only thing which the appropriate Government thereafter can do is to revise the wages so fixed but cannot rescind.

This power to rescind the wages once fixed without any express provision in that regard in Section 3(1A) of the Act can well be inferred with reference to Section 21 of the General Clauses Act, 1897. Because of this Section 21 of the General Clauses Act, it is always implicit that where a power to issue notifications, orders, rules, or bye-laws, is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notification, orders, rules, or bye-laws so issued. Even so, an effective cancellation of an order or rule must be made only in that manner the original order or rule is required to be made. For example, where an order or rule is required to be published in a Government Gazette and has been so published it can only be amended or cancelled by subsequent order or rule which is published also in the like manner. This implied power of cancellation or amendment is subject to the same limitations which are applicable to the original exercise of power. Since, however, the rule enacted in Section 21 of the General Clauses Act is merely a rule of construction, it may be displaced to the extent the provisions, the scheme and the object of any particular statute indicate a contrary intention.

Shri Deoras, learned counsel for the petitioner, attempted to wriggle out of the rule enacted in Section 21 of the General Clauses Act and argued that for rescinding the minimum wages once fixed, the same procedure prescribed in Section 5 of the Minimum Wages Act for purpose of fixing the minimum rates of wages in respect of any scheduled employment should be followed and since the same has not been followed in the present case while rescinding the minimum rates of wages once fixed, the action in rescinding the notification fixing the minimum rates of wages should be held illegal. Section 5 of the Minimum Wages Act provides that for fixing minimum rates of wages in respect of any scheduled industry for the first time or in revising the minimum rates of wages so fixed, the appropriate Government shall (i) appoint committees or sub-committees to hold enquiries and advise or (ii) by a 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. Then after considering the advice of the committee or committees as the case may be, and after receiving representations pursuant to the notice published in the Official Gazette, the

appropriate Government shall fix by notification in the Official Gazette, the minimum rates of wages or revise the minimum rates of wages in respect of each scheduled employment. Even if it is accepted that notification fixing the minimum rates of wages could be rescinded only in the above manner provided u/s 5 of the Act and not otherwise, it is to be noted that the petitioner has not come out with any such case in the petition itself. The petition is completely silent as to the issuance of any such notification originally fixing the minimum rates of wages in the lac manufactory. Instead, what is claimed in the petition is that the minimum rates of wages have not been fixed in this industry at all. It is only in the return exhibited by the respondents that one finds mention of two notifications in that regard and the reference to subsequent notification rescinding the minimum rates of wages earlier fixed. It will, therefore, be not even just to consider the petitioner's argument that the rule enacted in Section 21 of the General Clauses Act permitting cancellation of the original fixation of minimum rates of wages cannot be availed of by the respondents because of their failure to follow the procedure prescribed u/s 5 of the Minimum Wages Act. The petitioner has laid no foundation to advance such argument.

Shri Deoras referred to two decisions of the Supreme Court to support his contention that in the present case the respondents cannot be justified in supporting their stand on the basis of the rule in Section 21 of the General Clauses Act. These two decisions are *State of Bihar v. D.N.Ganguly* (1958 I LLJ 634) and *B.B. Rajwanshi Vs. State of U.P. and Ors*, . The earlier decision has been referred to with approval in the later one. In both these decisions, the question was whether a reference made u/s 10 of the Industrial Disputes Act to the appropriate Government can be permitted to be rescinded before making of the award. The following passage from the decision in the earlier case has been reproduced in the latter decision. *B.B. Rajwanshi Vs. State of U.P. and Ors*,

"Apart from these provisions of the Act, on general principles it seems rather difficult to accept the argument that the appropriate Government should have an implied power to cancel its own order made u/s 10(1). If on the representation made by the employer or his workmen the appropriate Government considers the matter fully and reaches the conclusion that an industrial dispute exists or is apprehended and then makes the reference u/s 10(1), there appears to be no reason or principle to support the contention that it has an implied power to cancel its order and put an end to the reference proceedings initiated by itself. In dealing with this question it is important to bear in mind that power to cancel its order made u/s 10(1), which the appellant claims, is an absolute power; it is not as if the power to cancel implies the obligation to make another reference in respect of the dispute in question; it is not as if the exercise of the power is subject to the condition that reasons for cancellation of the order should be set out. If the power claimed by the appellant is conceded to the appropriate Government it would be open to the appropriate Government to terminate the proceedings before the tribunal at any stage and not to refer the industrial dispute to any other industrial tribunal at all. The discretion given to the

appropriate Government u/s 10(1) in the matter of referring industrial disputes to industrial tribunals is very wide; but it seems the power to cancel which is claimed is wider still; and it is claimed by implication on the strength of Section 21 of the General Clauses Act. We have no hesitation in holding that the rule of construction enunciated by Section 21 of the General Clauses Act in so far as it refers to the power of rescinding or cancelling the original order cannot be invoked in respect of the provisions of Section 10(1) of the Industrial Disputes Act."

It will, thus, appear that because of the special feature of Section 10 (1) of the Industrial Disputes Act conferring power to the appropriate Government to refer the dispute to the tribunal conceding the power by virtue of Section 21 of the General Clauses Act to that appropriate Government, to cancel the reference would mean permitting that Government to terminate the proceedings before the tribunal at any stage and not to refer the industrial dispute to any industrial tribunal at all and such a wide power, says the Supreme Court, cannot be conceded in favour of any Government with the aid of Section 21 of the General Clauses Act. Because of the special feature, the rule laid down in the aforesaid two decisions cannot be made applicable to the provision of Section 3(1A) of the Minimum Wages Act.

It has also been the contention based upon the rule laid down in *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, : that labour or service for remuneration which is less than the minimum wage amounts to violation of Article 23 of Constitution of India and, therefore, it is the Constitutional obligation of the State to take necessary steps for the purpose of interdicting such violation and ensuring observance of the fundamental right by the one including private individual who is transgressing the same. Indeed, in that decision, it has been emphasised that the State Government is under an obligation to see that there is no violation of fundamental right of any person particularly when he belongs to weaker section of humanity and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. Fairly enough, the learned counsel appearing for the State did not dispute those obligations. Instead she assured the Court that enquires are being made in this direction and if it is found that the number of the employees in this lac manufactory has increased to more than one thousand, steps will soon be taken to fix the minimum rates of wages. We have no reason to think that this shall not be done. But we only hope that not much time is lost before the poor labour employed in this industry are assured just reward for their labour. We also expect the respondents to expedite this enquiry and save the labourer from any exploitation.

The petition is, accordingly, disposed of. There shall be no order as to costs.