

(1988) 08 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition No's. 1200 and 3968 of 1986

Sangli District Powerloom Owners' Association Ltd. and
Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 22-08-1988

Acts Referred:

Minimum Wages Act, 1948 — Section 3(1)(b), 5(2), 9

Citation : (1989) 58 FLR 68 : (1995) 3 LLJ 779

Hon'ble Judges : Kotwal, J; Dharmadhikari, J

Bench : Division Bench

Advocate : B.N. Srikrishna, for the Appellant; H.L. Gokhale, A.G.P. for R-1, Madan Phadnis, S.T. Satwandeekar for R-2 to 4 and N. Bhagwat, for R-5, for the Respondent

Final Decision : Partly Allowed

Judgement

Dharmadhikari, J.—As all these writ petitions involve common questions of law and fact, they were heard together and are being disposed of by this common judgment.

2. In writ petitions No. 4149/84, 4147/84, 4150/84, 4144/84 and 4214/84 the notification dated 1st August 1984 issued by the Government of Maharashtra in exercise of powers conferred by Clause (b) of Sub-section (1) of Section 3 read with Sub-section (2) of Section 5 of the Minimum Wages Act, 1948, is challenged on various grounds. One of the contentions raised in the petitions related to the constitution of the Advisory Committee itself. It was contended by the petitioners that the Committee was not properly constituted since the person who was initially a representative of the employees, was subsequently appointed as a Chairman of the Committee, which was contrary to the provisions of Section 9 of the Minimum Wages Act, as he could not be termed as an independent person. Some other contentions were also raised. However, it is not necessary to decide any of these contentions, since thereafter a fresh notification came to be

issued vide notification dated 10th of January 1986. In view of this, earlier notification of 1984 did not survive.

3. Shri Phadnis, learned counsel appearing for the respondent-employees, has filed a statement before us that the employees represented by the respondents No. 2, 3 and 4 in writ petition No. 4149 of 1984 do not press their claim for 100% implementation of the notification dated 1st of August 1984 and will be satisfied with the interim order passed by this court. Such a statement came to be filed since by an interim order, dated 8th October 1984, this court had directed that the employer shall pay 75% of total wages fixed under the impugned notification during the pendency of the writ petitions. Liberty was also given to the State Government to take any steps as it desires. We were told that in some cases employees were not even paid the 75% of the total wages fixed under the impugned notification dated 1st August 1984. Obviously the cases in which wages were not paid by the employers even in terms of the interim, order passed by this Court on 8th October, 1984 the employees will be entitled to recover the said amount in accordance with law. However, in view of the liberty given by this Court to the State Government, the State Government has taken further steps and had issued fresh notification dated 10th January, 1986. Thus the question involved in writ petitions in which notification dated 1st August, 1984 was challenged, has become wholly academic. Therefore, no orders are necessary in those writ petitions. It is needless to say that for the period from 1st August, 1984 to 14th January, 1986 the employer will not be obliged to pay anything over and above 75% of the wages directed to be paid by this court vide interim order dated 8th October 1984. Hence the said writ petitions stand disposed of with no orders as to costs.

4. In writ petitions No. 1200 of 1986 and 3968 of 1986, notification issued by the State Government dated 10th January, 1986 fixing minimum wages with effect from 15th January 1986 for the Scheduled Employment, namely Powerloom Industry. is challenged on various grounds Shri Shrik-rishna learned counsel appearing for the petitioners contended before us that the Chairman of the Advisory Board, Shri Harib-hau Naik, was not an independent person. According to him the Chairman of the said Advisory Board, Shri Naik, is a well-known Trade Unionist, connected with the Trade Unions affiliated to INTUC and is also the President of the Rashtriya Mill Mazdoor Sangh, which is a representative union of the employees employed in the Cotton Textile Industry. It is also contended by the learned counsel that the Cotton Textile Industry is intimately connected with the Powerloom Industry and, therefore, a person who is the President of the Rashtriya Mill Mazdoor Sangh, a trade union of employees in the Cotton Textile Industry, cannot be termed as an independent person within the contemplation of the said expression in Sec-tion 9 of the said Act.

5. In reply, it is contended by the respondents that Shri Haribhau Naik was appointed as Chairman of the Board in his capacity as a member of the Maharashtra Legislative Council. In any case no prejudice is caused to the

employers by his being a Chairman inasmuch as the recommendation of the Advisory Board was unanimous and there was no occasion for him to exercise his casting vote. Besides this, under the Maharashtra Minimum Wages Rules, his role is merely to preside over the Meeting and in his absence, any other member selected by majority can preside over the meeting. In this case recommendation being unanimous participation of Shri Haribhau Naik has not made any difference. If Section 9 is read together with Section 7 of the said Act, it is clear that the Advisory Board is to consist of persons representing employers and employees in the Scheduled Employment, who shall be equal in number, and independent persons not exceeding one-third of its total number of members, one of such persons is to be appointed Chairman of the Board by the appropriate Government. In support of their contention, the learned counsel have placed strong reliance upon the decisions of the Supreme Court in *Bijay Cotton Mills Ltd. Vs. The State of Ajmer*, ; *The State of Andhra Pradesh Vs. Narayana Velur Beedi Manufacturing Factory and Others*, ; *State of Rajasthan and Another Vs. Shri Hari Ram Nathwani and Others*, , *Ministry of Labour and Rehabilitation and Another Vs. Tiffin's Barytes Asbestos and Paints Ltd. and Another*, . In our view it is not necessary to deal with the cases cited at the Bar for deciding the controversy raised before us. Scheduled employment as enumerated in the schedule does not include Textile Industry as such. Therefore, in terms textile industry is not a scheduled employment. Therefore, a person connected with the said employment cannot be termed to be a person who is an interested person. It appears from the affidavit filed by the respondents that at the material time Shri Naik was a member of the Legislative Council and in that capacity he came to be appointed as Chairman of the Board and not because he was President of Rashtriya Mill Mazdoor Sangh. Further in view of the fact that the advice given by the Board was unanimous one no prejudice was caused by his appointment as Chairman of the Board. Therefore, we do not find any substance in this contention.

6. It was also contended by the learned counsel that in any case notification dated 10th January, 1986 fixing special allowance is wholly illegal. It is by now well settled that special allowance is nothing but a dear-ness allowance. From the explanation (g) to the notification dated 10th January, 1986 it is quite clear that the consumer index No. 184 is taken as basis for the purpose of fixing the special allowance. It is, therefore contended by the learned counsel that in cases of employees who are getting less than Rs. 184/- as basic wage under notification, dated 10th January 1986, resultant Neutralisation is above 100%, which is contrary to the law laid down by the Supreme Court as well as by this Court in *Hydro (Engineers) Pvt. Ltd. Vs. The Workmen*, , *Shivraj Fine Arts Litho Works and Others Vs. The State Industrial Court, Nagpur and Others*, . *The Management of Shri Chalthan Vibhag Khand Udyog Sa-hakari Mandali Ltd. v. G.S. Barot and Anr.* 1979 (II) LLJ 385. *the N.M. Wadia Charitable Hospitals and Ors. v. State of Ma-harashtra and Ors.* 1986(2) CLR 443, *The N.M. Wadia Charitable Hospital and Ors. v. State of Maharashtra and Ors.* 1987 (1) CLR 351, and by Karnataka High Court in *Aspinwal & Co. Ltd and Ors. v. State of*

Karnataka and Anr. 1986 (69) FJR 15. We find some substance in this contention. It is not necessary to make a detailed reference to other decisions in the field in view of the decision of the Supreme Court in CVKUS Mandali's case. After making a reference to the earlier decisions in the field, this is what the Supreme Court has observed in the aforesaid decision;

"The decision is authority for the proposition that the rate of neutralisation cannot be more than 100% even in the case of lowest paid employees. The propositions laid down in the decisions cited above were reiterated and followed in Shivraj Fine Arts Litho Works and Others Vs. The State Industrial Court, Nagpur and Others, ."

7. The law is thus clear that dearness allowance is intended to neutralise a portion of the increase in the cost of living. Though 100 per cent neutralisation is not advisable as it will lead to inflation, full neutralisation may be permissible only in the case of the lowest class of employees. The management is entitled to complain if the neutralisation is more than 100 per cent.

8. The purpose of grant of dearness allowance is to neutralise the increase in the cost of living due to rise in prices. Neutralisation may be such as to neutralise fully the increase in the cost of living or may be restricted to neutralise only a portion of the increase. Full or cent per cent neutralisation can be achieved if the increase in the cost of living is fully compensated so that the pay of the worker is not adversely affected. But an award of more than 100 per cent of an increase in the cost of living would be more than neutralisation and would in effect give the worker an increased wage. The result would be the worker would be getting an increased wage packet whenever there is a price rise a result which would not have been envisaged in making provision for grant of dearness allowance. Therefore, it appears to be a well settled position that neutralisation cannot exceed "100%. However, it is contended by Shri Phadnis learned counsel appearing for the respondents that the Government did not link up the basic wage or special allowance with consumer index No. 184 as contended by the employers. In substantive part of the notification no reference is made to any index number. Reference is only made in the explanation. Figure 184 is referred to in the explanation to the schedule to explain the notification itself. For deciding the question as to whether the neutralisation contemplated is more than 100%, the totality of the circumstances will have to be taken into consideration. In the year 1971, first notification fixing minimum wages for Powerloom Industry came to be issued. At that time consumer price index number was 184. Therefore, it will not be correct to say that the neutralisation contemplated by the impugned notification is more than 100% qua the employees who are getting less than Rs. 184/- as basic wage.

9. Mrs. Bhagwat, learned counsel appearing for Nasik Zilla Shramik Union, (AI-TUC), has contended before us that if the totality of the circumstances are taken into consideration minimum wage fixed under the present notification is not exorbitant. Initially the minimum wage was fixed in the year 1971. In the year

1978 there was a flat increase" of Rs. 25/- but in the true sense of the term wages were not revised. It is by the impugned notification, that the rates of wages came to be revised. If the wages fixed are considered in the context of the price existing in the year 1971 and the meagre increase in 1978, it cannot be said that the Neutralisation contemplated is more than 100%. Though argument is attractive it is difficult to accept it.

10. Report of the Minimum Wages Committee, on the basis of whose advise the wages came to be revised vide notification dated 1st August 1984 clearly indicate that the Committee has taken the consumer index No. 184 as the basis for fixation of minimum wage. This was the price index number for Bombay. On the basis of this index number special allowance came to be fixed. Therefore, from the material placed on record it is quite obvious that the consumer index No. 184 which was the consumer index number for Bombay in the year 1971, is taken as a basis or foundation for fixing the special allowance. The position is clear from the explanation (g) to the impugned notification which read as under: -

"(g) The competent authority shall declare the consumer price index number for working class (New Series) Bombay City shall be the cost of living index number applicable to the employees employed in the said scheduled employment in pursuance of Clause (d) of Section 2 of the said Act and shall, after the expiry of every six months commencing on 1st day of January and the 1 st day of July, calculate the average of the cost of living index applicable to the said employees for these six months, and ascertain the rise of such average over 184. For such rise of every point, the special allowance (hereinafter referred to as the cost of living allowance) payable to the employees in the said scheduled employment for each of the six months immediately following the six months in respect of which such average has been calculated shall be at the rate of Re. 1/- per month, in respect of all zones",

From the bare reading of this clause it is clear that for ascertaining average rise in the prices, consumer price index No. 184, was taken as the basis. If this is so then, it will have to be held that consumer price index No. 184 is the basis, on which special allowance has been fixed by the Government under the notification dated 10th January 1986. If this is the case then it appears to be an admitted position that qua the employees who are getting basic minimum wage which is less than Rs. 184/-, neutralisation will be more than 100%. Unfortunately this is the position qua lowest paid employees. However, in view of the authoritative pronouncement of Supreme Court in CVKUS Mandali's case, which is binding upon us, we have no other alternative but to hold that to that extent the notification will be bad in law. This is an unfortunate result which could not be helped.

11. However, it cannot be forgotten that said portion of the notification is severable. It is again not disputed that in the cases of those employees who are getting minimum basic wage of more than Rs. 184/-neutralisation is less than 100%. It is only in respect of the employees who are getting basic minimum

wages less than Rs. 184/-, neutralisation is something more than 100%. Therefore, fixation of special allowance under the impugned notification as a whole is not bad in law, Therefore, in our view, an equitable order will be to keep the notification intact, with a direction that the special allowance to be paid from 15th November 1988 shall not exceed 100% Neutralisation. We are fixing this date to enable the Government to take appropriate steps i.e. to suitably modify the notification in accordance with law. The special allowance to be calculated with reference to consumer price index no. 184 which is taken as basis for fixing special allowance. No other contention was argued at the time of hearing and Dr. Naik adopted the arguments advanced by Shri Shrikrishna.

Hence, Rule is made partly absolute to the extent indicated above with no orders as to costs in writ petition Nos. 1200 of 1986 and 3968 of 1986. The State Government is directed to take necessary steps in this behalf before the 15th November 1988. By consent interim order passed by this Court is extended up to 15th November 1988, qua the employees who are paid less than Rs.184/- as basic minimum wage. However, whatever amount is already paid will not be recoverable. It is needless to say that those who are getting more than Rs. 184/- as basic minimum wage will not be affected by this arrangement since in their cases neutralisation is below 100%. So far as they are concerned the notification is held valid and stands confirmed.

Liberty to the parties to apply.