

(1969) 06 GUJ CK 0003
In the Gujarat High Court

The Digvijaysinhji Salt Works Pvt. Ltd. and Others	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 17-06-1969

Acts Referred:

Constitution of India, 1950 — Article 14, 14
Minimum Wages Act, 1948 — Section 9, 9

Citation : (1970) 11 GLR 342

Hon'ble Judges : S.H. Sheth, J;B.J. Divan, J

Bench : Division Bench

Judgement

B.J. Divan, J.—The petitioners in this matter are the salt-manufacturers producing salt by solar heat from sea-water at different places in the State of Gujarat and the respondent is the State of Gujarat. The petitioners own Marine Salt Works at different places and they manufacture salt by drawing sea-water into crystalisers and then allowing it to evaporate by solar heat. The salt thus manufactured is sold as ordinary salt in the market by the petitioners. The petitioners engaged various categories of employees directly as well as through contractors for the purpose of manufacturing salt; and according to the petitioners, the working conditions and the rates of payment of the employees vary as per the local conditions of work at different places. Under the Minimum Wages Act, 1948, enacted by the Parliament, the State Government is empowered to fix the minimum rate of wages u/s 3, provided the procedure prescribed under the Act is followed. The State Government can fix such wages in respect "of scheduled employment. A Schedule of the different employments in respect of which the minimum wages could be fixed was enacted when the Act was passed in 1948 and u/s 27, the State Government is empowered to add entries to the Schedule thus adding to the list of scheduled employments. In exercise of the powers conferred upon it, the Government of the State of Gujarat by issuing a Notification of July 7, 1964, added: "Employment in salt-pan industry" as one of the entries in the list of scheduled employments. On November 21, 1964, the State Government appointed a Committee under the

Chairmanship of Mr. B.C. Vakil, Member of the Industrial Court at Ahmedabad, to hold enquiries and to advise the Government in respect of the fixation of minimum rates of wages in respect of the employment in the Salt-Pan Industry. The said Committee submitted its report to the Government of Gujarat and on the advice of the said Committee and after consulting the Advisory Board appointed u/s 7 of the said Act, the Government by their Notification, dated 10th January 1967, fixed the minimum rates of wages for salt-pan industry in the State of Gujarat, under the provisions of Section 5 of the Act. These rates of minimum wages were to come into force from February 1, 1967. The present petition has been filed by the petitioners for a writ of or in the nature of mandamus or any other appropriate writ, direction or order quashing and setting aside the impugned Notification, dated 10th January 1967, issued under the provisions of Section 3(1)(a) read with Section 5(2) of the Act; and the petitioners pray for an order from this Court permanently restraining the respondent from enforcing payment of minimum wages in accordance with the impugned Notification.

2. At the hearing of this Special Civil Application before us, Mr. Nanavati, on behalf of the petitioners, urged the following three contentions. Firstly, he contended that the constitution of the Committee was not in accordance with law inasmuch as the Chairman of the Committee was not an independent person as required by Section 9 of the Act and inasmuch as two persons appointed by the Government as representing the employees in the scheduled employment did not represent the employees in the saltpan industry. Secondly, Mr. Nanavati contended that the minimum wages fixed by the Government after following the procedure as mentioned above are in reality fair wages and not the minimum wages; and thirdly, Mr. Nanavati contended that the different areas in the State of Gujarat where salt-pan industry is being carried on has not been divided into different zones on the basis of local conditions of work and, therefore, all the areas have been treated on par. This has been treated indiscriminately as right and this has been done in an arbitrary manner and this arbitrary fixation of minimum wages on equal footing irrespective of local conditions of work, is violative of Article 14 of the Constitution of India. These are the only three grounds on which the impugned Notification has been challenged before us.

3. In order to appreciate the first contention urged by Mr. Nanavati, it is necessary to go to Section 9 of the Act. That section provides as under:

9. Each of the committees, sub-committees and the Advisory Board shall 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 its total number of members; one of such independent persons shall be appointed the Chairman by the appropriate Government.

Mr. Nanavati has contended before us that in the instant case Mr. B.C. Vakil, who was a member of the Industrial Court at Ahmedabad, was not an independent

person contemplated by Section 9 of the Act. Apart from authorities and decided cases on the interpretation of Section 9, on examination of the scheme of the section, it is clear that there should be equal number of members representing employers and employees in the scheduled employments and further independent persons not exceeding one-third of the total number of members of the Committee etc. are also appointed and the Chairman of the Committee or the Advisory Board, as the case may be, has to be one of such independent persons. An independent person in this context means, in our opinion, a person who is neither an employer nor an employee in the scheduled employments; and it is in that sense that the words "independent persons" have been used by the Legislature u/s 9. The Legislature has provided in this section that the membership of the different Committees, sub-committees and the Advisory Boards contemplated by this Act should be by nomination by the appropriate Government of persons representing employers and employees in the scheduled employments and at the same time some persons who are neither employers nor employees in any of the scheduled employments, and, therefore, are independent either of employers or of employees, should be appointed and the Chairman should be one of such independent persons. In this context, Mr. Nanavati contended that every employee of the State Government in whatever department he might be functioning, is dependent upon the State and, therefore, he is not an independent person within the meaning of Section 9. On the interpretation of Section 9, which we have just now set out, this contention of Mr. Nanavati must fail.

4. However, Mr. Nanavati has relied on the decision of the Madhya Pradesh High Court in *Narottamdas Harjiwandas Vs. P.B. Gowarikar, Inspector, Minimum Wages, Assistant Labour Commissioner's Office and Others*, . In that case, a Division Bench of the Madhya Pradesh High Court has laid down that the independent member mentioned in Section 9 of the Minimum Wages Act must be independent of employees, employers and also the State. In that particular case, the Labour Commissioner of the State of Madhya Pradesh and the Director of Economics and Statistics of that State had been appointed as members of the Advisory Board contemplated by Section 7 of the Act. At page 187 of the report, Dixit C, J. delivering the judgment of the Court has observed:

We are not prepared to accept the stand taken on behalf of the State that the expression "independent persons" as used in Section 9 means persons who are independent only of employers and employees in the scheduled employment and includes an official. The ordinary connotation of the words "independent person" is a person who is not dependent on any body, authority or organisation and who is able to form his own opinion without any control or guidance from any outside agency.

In the matter of fixation of minimum wages the contesting parties are no doubt the employers and the employees. But the Government who fixes the rates of wages is not absolutely disinterested in the matter. This is so especially when the

Government itself controls or runs a scheduled employment. It is not disputed that the opponent-State controls employment in public motor transport as also in a tannery at Gwalior.

If the State runs stage carriages and owns a tannery, then it is clearly an employer within the definition given in Section 2(e)(ii) of the Act. Then again, in a welfare state as envisaged by the Directive Principles of State Policy embodied in Part IV of the Constitution, the State cannot be regarded as a mere passive onlooker in the determination of wage structure or of minimum wages.

The State is, therefore, actively interested in wage-earners and in the matter of fixation of minimum wages in any scheduled employment. If the State is thus so interested party, then a Government official cannot by any stretch of reasoning be regarded as an independent person for the purpose of Section 9. The expression "independent person" must be construed to mean as one who is independent of the employers and the employees as well as Government. A Government servant's freedom of action and thought is limited by the fact that he is required to act for carrying out Government's policy.

In our opinion, while considering this decision of the Madhya Pradesh High Court, one must not lose sight of the fact that the persons appointed by the Government as independent persons in that particular case were the Labour Commissioner and the Director of Economics and Statistics and those officers were, directly concerned with the carrying out of the Government's policy. In the instant case before us, however, the person who has been appointed as the Chairman is the member of the Industrial Court, who performs judicial functions and who is in no way connected with carrying out of the Government's policy and whose field of action and thought is in no way limited by the fact that he is required to act for the purpose of carrying out Government's policy. In our opinion, the observations of the learned Chief Justice of the Madhya Pradesh High Court must be-read in the context of these particular Officers before him being the Labour Commissioner and the Director of Economics and Statistics of the State Government. In the instant case, we are not concerned with any Executive Officer of the State but with an officer who is performing judicial functions in the discharge of his official duties and who is not concerned either with formation or carrying out of the Government's policy.

5. As against this decision of the Madhya Pradesh High Court, we may point out that three of the High Courts in India, viz., Kerala High Court, the Punjab High Court and the Bombay High Court have in terms dissented from the view taken by the Madhya Pradesh High Court.

6. In *D.M.S. Rao and Others Vs. The State of Kerala and Another*, Vaidialingam J. (as he then was) has held that the expression "independent person" in Section 9 does not mean one who is independent of the employers and the employees as well as the Government. According to the learned Judge, there is no such indication available from the provisions of Sections 99 When, it speaks of persons

to be nominated by the Government to the committee representing employers and employees in the scheduled employments and also of nominating an "independent person", the object of the enactment is that the "independent person" should be one who has nothing to do with the employers or employees in the scheduled employment in question. It may be that under particular circumstances, when an industry, in which the State Government as an employer may also be vitally interested and in which case it can be considered to be an employer, it may not be proper to appoint an official to the committee treating him as an independent person. In this particular case, the learned Judge of the Kerala High Court has followed the decision of the Punjab High Court in *Jaswant Rai Beri and Others Vs. State of Punjab and Another*, and in terms dissented from the view of the Madhya Pradesh High Court in *Narottamdas*'s case (supra).

7. In *Jaswant Rai Beri and Others Vs. State of Punjab and Another*, , Bishan Narain J., sitting singly has held that it is not laid down anywhere in the Act or elsewhere that an official of the Government cannot be nominated as a member of the committee or that only a nonofficial can be considered to be an independent person. An "independent" person in this context, according to the learned Judge, means a person who is neither an employer nor an employee in the employment for which minimum wages are to be fixed. According to the learned Judge, the appointment of a Labour Commissioner as representing independent interest was valid and, therefore, his appointment as Chairman was also valid. It may be pointed out that the Madhya Pradesh High Court considered the decision of the Punjab High Court in *Jaswant Rai*'s case (supra) and in terms differed from the view expressed therein.

8. In *Ramkrishna Ramnath and Another Vs. The State of Maharashtra and Another*, , a Division Bench of the Bombay High Court has considered the decision of the Madhya Pradesh High Court in *Narottamdas*'s case (supra), and of the Punjab High Court in *Jaswant Rai*'s case (supra); and it was held by the Division Bench consisting of Kotwal J. (as he then was) and Wagle J. that it cannot be said that the provisions of the Minimum Wages Act prescribe that a Government servant cannot be a member of the Advisory Board or that if he is a member, he cannot be an "independent person" within the meaning of Section 9. The expression "independent persons" is used in contradistinction with persons representing employers and persons representing employees. The true meaning, therefore, of the words "independent person" in Section 9 of the Act is that those persons must be independent of the other two classes, namely, persons representing employers and persons representing employees. The word "independent" in that context cannot mean independent in the ordinary and wider acceptation of that term as meaning "not belonging to any party or group whatsoever; not being under obligation to anybody". If that shade of meaning were to be given to the word "independent", it will be practically impossible to find an independent "person" where a major industry is concerned for it will always be possible to find or at least to allege some connection or other with the industry against most persons.

9. Independently of the decisions of the Punjab, Kerala and Bombay High Courts, on an analysis of Section 9, we have come to the same conclusion and the construction which has appealed to them has also appealed to us. We have also pointed out above that while reading the decision of the Madhya Pradesh High Court, it must be borne in mind that the Government of Madhya Pradesh was interested in two of the scheduled employments and what seems to have weighed with the Madhya Pradesh High Court is the fact which is well-recognised in industrial disputes, that the minimum wages fixed in one industry in the State are bound to have repercussions on minimum wages in the same State or same area and it appears that it is in this context that the Madhya Pradesh High Court has held that the Labour Commissioner and Director of Economics and Statistics were not independent persons within the meaning of Section 9 of the Act. In our opinion, on the interpretation of Section 9 of the Act and further in view of the fact that in this particular case before us, Mr. B.C. Vakil, Member of the Industrial Tribunal, was not concerned in any manner with the formation or carrying out of Government's policy in economic or industrial field but was performing judicial and quasi judicial functions in the discharge of his official duties, it cannot be said that he was not an independent person within the meaning of Section 9 of the Act.

10. As regards his first contention regarding the constitution of the Committee, Mr. Nanavati also contended that Navinchandra M. Barot and Rasiklal Mehta, who were appointed by the Government on the Committee as representing employees were not representatives of the employees in this particular industry in question viz., Salt-Pan Industry. In para 11 of the petition, it has been stated that both Navinchandra M. Barot and Rasikbhai Mehta, nominated by the Government as employees' representatives were the persons connected with labour organisations and had practically nil or very much less experience in the manufacture of salt pan industry. Navinchandra Barot is one of the nominated Directors of the Hindustan Salt Works, but even Barot has also no experience of the salt pan industry. Both Barot and Mehta are the labour representatives appearing day in and day out before the Industrial Tribunals.

11. In the affidavit-in-reply filed on behalf of the State in para 13, it has been stated:

I deny that Shri Navinchandra M. Barot and Shri Rasikbhai Mehta appointed by Government as employees' representatives were persons connected with only labour organisations and had practically nil or very much less experience in the manufacture of salt pan industry. I do not admit that Shri Barot has no experience of the salt pan industry. I say that Shri Barot was one of the Directors of Hindustan Salt Works. He was also Vice-President of Mundra Salt Works Mazdoor Sangh, Bhuj, and President of the Kandla Salt Works Mazdoor Sangh, Ahmedabad. Shri Rasiklal Mehta was also a Vice-President of the Mundra Salt Works Mazdoor Sangh, Bhuj, and both the unions are unions of the employees of salt pan industry. As such both the aforesaid persons were actively connected

with the conditions prevailing in salt pan industry.

There has been no affidavit-in-rejoinder contradicting these assertions of facts in the affidavit-in-reply. In the light of these facts, Mr. Nanavati contended that in the context of Section 9 of the Act, the words; "representing employees in the scheduled employment" must mean the persons who are actually workers and employees in the scheduled employment concerned and Trade Union Officials or Trade Union Representatives, who have only the experience of representing the employees in labour disputes before the Industrial Tribunals and other similar bodies cannot be considered to be representatives of employees of this particular scheduled employment. It was contended in this connection that it is only actually the employees in the salt pan industry who can be conversant with the conditions of work in that particular industry and only such actual employees can represent the employees in this particular industry. It was contended that as Navinchandra Barot and Rasikbhai Mehta were mere Trade Union leaders, they could not be said to be representatives of all the employees in the salt-pan industry in the State of Gujarat. We are unable to accept this particular contention of Mr. Nanavati because all that the section requires is that the persons nominated by the State Government on such Advisory Committee, Sub-Committee or Advisory Board shall be persons representing employees in the scheduled employments. The section nowhere requires that they shall be actually employees in the employment in question nor does it require that a person who has experience or knowledge in one capacity or another of the problems of employees in a particular industry cannot represent those employees for the purpose of nomination u/s 9.

12. We now come to the next contention of Mr. Nanavati viz., that the rate which has been fixed as the rate for minimum wages is in fact fair wages and the concept of minimum wages has not been borne in mind in fixing the rates. Mr. Nanavati cited before us in this connection, the decision of the Supreme Court in *U. Unichoyi and Others Vs. The State of Kerala*, . There the Supreme Court has considered the effect of the provisions of Sections 3, 4 and 5 of the Minimum Wages Act and the constitutional validity of those provisions. Gajendragadkar J. (as he then was) delivering the judgment of the Supreme Court in that case has pointed out in para 12 as follows:

What the Act purports to achieve is to prevent exploitation of labour and for that purpose authorises the appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries. In an under-developed country which faces the problem of unemployment on a very large scale it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum wage rates the capacity of the employer need not be considered. What is being prescribed is minimum wage rates which a welfare State assumes every employer must pay before he employs labour.

In para 13, the components of a minimum wage in the context of the Act have been laid down by the Supreme Court and relying upon the report of the Committee on Fair Wages, the Supreme Court observed:

The Committee came to the conclusion that a minimum wage must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the worker, and so it must also provide for some measure of education, medical requirements and amenities. The concept about the components of the minimum wage thus enunciated by the Committee has been generally accepted by industrial adjudication in this country. Sometimes the minimum wage is described as a bare minimum wage in order to distinguish it from the wage structure which is "subsistence plus" or fair wage, but too much emphasis on the adjective "bare" in relation to the minimum wage is apt to lead to the erroneous assumption that the maintenance wage is a wage which enables the worker to cover his bare physical needs and keep himself just above starvation. That clearly is not intended by the concept of minimum wage. On the other hand since the capacity of the employer to pay is treated as irrelevant, it is but right that no addition should be made to the components of the minimum wage which would take the minimum wage near the lower level of the fair wage, but the contents of this concept must ensure for the employee not only his sustenance and that of his family but must also preserve his efficiency as a worker.

"Unfortunately for the petitioners in the present case, there are no materials on the record of this case which would go to indicate that the rates which have been fixed as minimum wages in the instant case include something which do not fall within the definition of "components of minimum wages" as described by the Supreme Court in the above case. In paragraphs 15 and 16 of the petition, the contention has been raised about the minimum wage rates having been fixed on the basis of fair wages and not on the basis of minimum wages. In the affidavit-in-reply filed on behalf of the State, in para 16, it has been pointed out that even the employers' Associations have in the oral evidence given before the Advisory Committee for salt pan industry admitted that the requirement of a family would be Rs. 104. 40 per month. Some other employers have stated that they would require Rs. 125/-per month. On the other hand the employees have estimated the monthly requirement between Rs. 110/- to Rs. 240/-. When one turns to the Notification issued by the Government fixing the minimum wages, one finds that the maximum amount which has been prescribed in *this connection is Rs. 104/- per month for skilled workers: Rs. 91/ - for semi-skilled workers and Rs. 71/50 P. for unskilled workers. Thus according to the affidavit-in-reply, the rates which have been prescribed by the Government under the impugned Notification cannot be said to exceed the figure of minimum wages for the requirements of a worker's family as indicated by the evidence before the Advisory Committee in this particular instance. But even apart from these averments in the petition and in the affidavit-in-reply, in the instant case the petitioners are faced with the defect of the absence of any materials, which would go to show that factors other than the components of minimum wages, as laid down by the Supreme Court in

U. Unichoiyi "s case (supra), have been taken into consideration by the Advisory Committee or by the Government. In these circumstances, because of the absence of such material, this contention urged on behalf of the petitioners must fail.

13. Regarding the last contention urged by Mr. Nanavati before us, again the petitioners are faced with the same defect of absence of materials on the record of the case. In paragraphs 15 and 16 of the petition, it has been contended that for the purposes of cotton textile industry, different zones have been recognised and dearness allowance is being granted in different zones at different rates. It has been contended in para 15 that by not grouping at all the different zones in the State on the consideration of the varying cost of living prevailing at different places, the impugned notification is entirely arbitrary and violative of the fundamental right guaranteed by the Constitution of India by Article 14. In para 17 in the affidavit-in-reply, it has been denied that the impugned Notification has not taken into consideration the cost of living index prevailing in different areas of the State of Gujarat. According to the affidavit-in-reply, the Committee had collected the necessary material by issuing a questionnaire, by oral evidence and" also by visiting the Salt Works, and in para 5. 2, Chapter V (page 24) the Committee has given reasons for not dividing the State into different zones. The Committee has observed that the Salt Pan Industry is located at distant places from urban and rural areas and most of the workers engaged in this employment have their place of residence adjacent to the salt works and in the opinion of the Committee, the workers have a uniform standard of living; and, under these circumstances, the Committee did not recommend that the State should be divided into different zones for fixing the minimum wages and has recommended a uniform wage rate for the entire State. The report of the Advisory Committee has not been brought before us by the petitioners or by the respondent. No notice was served before the hearing of the petition by the petitioners upon the respondent to produce a copy of the report or to keep a copy of the report ready at the time of the hearing of this petition and again we are faced with the difficulty of lack of materials while considering this particular contention of the petitioners. The employees engaged in this particular industry, viz., the Salt Pan Industry, have to work by the side of the sea-shore throughout the territory of Gujarat, and thus away from the major urban centers. If under these circumstances, the areas have not been divided into zones for fixing minimum wages, it cannot be said that the provisions of Article 14 of the Constitution have been violated in the instant case. In any event, the petitioners have to thank themselves for the state of affairs that exists today inasmuch as they have not placed sufficient materials before me to enable us to decide this particular contention.

All the three contentions urged before us on behalf of the petitioners fail. The result, therefore, is that this petition fails and is dismissed with costs. Rule is discharged.