

(1957) 01 KL CK 0023
In the High Court Of Kerala
Case No : O.P. No. 220 of 1956 (E)

Thomas

APPELLANT

Vs

State of Travancore Cochin

RESPONDENT

Date of Decision : 15-01-1957

Acts Referred:

Minimum Wages Act, 1948 — Section 3(1), 4(1)

Citation : AIR 1957 Ker 95 : (1957) 1 KLJ 210 : (1957) 2 LLJ 53

Hon'ble Judges : M.S. Menon, J

Bench : Single Bench

Advocate : K.P. Abraham, George Kurien and V.O. Markose, for the Appellant; V. Rama Shenoi, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

M.S. Menon, J.

1. The petitioner is the owner of a rubber estate with an area of about 107 acres and employing 25 workers for the purpose of tapping rubber. The schedule to Ext. P2, a notification of the Government of Travancore-Cochin in exercise of the powers conferred on them by Clause (a) of Sub-section (1) of Section 3 read with Clause (iii) of Sub-section (1) of Section 4 of the Minimum Wages Act, 1948, specifies the minimum wages payable to such workers.

2. The relevant portion of the schedule as amended subsequently reads as follows:

"I. The Minimum Time Rates.

Basic wages D. A. Total wages.

Rs.

As.

Ps.

Rs.

As.

Ps.

Rs.

As.

Ps.

(a) Field workers

Men

0

15

0

0

10

6

1

9

6

Women

0

11

3

0

8

0

1

3

3

Children

0

7

6
0
5
3
0
12
9

Women tappers will be paid at the rate of Rs. 1.6-6 perday.

II. Guaranteed Time Rates. Workers working on piece-rates shall be entitled to receive a guaranteed time rate over and above the piece-rates and irrespective of results. The rates shall be: --

(a) Men

12 as. 6 ps.

per day.

(b) Women

9 as. 6 ps.

per day.

(c) Children

6 as. 3 ps.

per day.

III. The minimum piece-rates shall be as follows:

(b) Tappers in Rubber Estates, shall be paid at the following rates varying with the yield of the estates concerned according to the following classification. In the case of estates where different types of rubber , are grown each type may be classified on the basis of the average yield per acre during the previous year:---

Class I.--i.e. (yielding below 250 lbs. per acre per annum) 4 as. 10 pies per lb. for the first 3 lbs. of rubber collected on a day; Class II--i.e. (yielding 250 to 400 lbs. per acre per annum) 2 annas 5 pies for the first 6 lbs, of rubber collected on a day;

Class III.--i.e. (yielding, 401 to 600 lbs. per acre per annum) 1 anna 5 pies per lb. for the first 10 lbs; and

Class IV,--i.e. (yielding 601 lbs. and above per acre per annum) 1 anna per lb. for the first 14 lbs.;

(c) In the rubber estates where the average productivity of a tapper per day is three pounds of rubber or more, the tappers will be paid on the piece-rate basis".

3. The portion I have underlined in the extract from the schedule (that is, III (c)) was one of the two additions made by Ext. P1, a notification of the Government of Travancore-Cochin, dated the 28th June 1956, and the only contention urged before me on behalf of the petitioner is that the Government had no power to introduce such a provision,

4. Sub-section (1) of Section 3 of the Minimum Wages Act 1948, says that the appropriate Government shall, in the manner thereafter provided, fix and review the minimum rates of wages payable to employees employed in the employments specified in Parts I, II and III of the schedule to the Act, and Sub-section (2):

"The appropriate Government may fix,--

(a) a minimum rate of wages for time work (hereinafter referred to as "a minimum time rate");

(b) a minimum rate of wages for piece work (hereinafter referred to as "a minimum piece-rate");

(c) a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis (hereinafter referred to as "a guaranteed time rate");

(d) a minimum rate (whether a time rate or a piece-rate) to apply in substitution for the minimum rate which would otherwise be applicable, in respect of over time work done by employees (hereinafter referred to as "overtime rate").

5. The Act does not appear to confer any, power on the Government to insist that an employer employing workers on time rates should pay them on piece-rates. The petitioner employs his workmen on time rates and what the provision impugned does is to direct him to pay them on piece-rates whenever the average productivity of a tapper per day in his estate is three pounds of rubber or more.

6. The learned Government Pleader is unable to point out any provision of the Minimum Wages Act, 1948, which can sustain the said provision, namely--

"In the rubber estates where the average productivity of a tapper per day is three pounds of rubber or more, the tappers will be paid on the piece-rate basis"

and I must declare the same to be ultra vires of the powers of the Government under the Act.

7. The petition is allowed in the manner and to the extent indicated above though in the circumstances of the case without any order as to costs.